

TRANSCRIPT OF PROCEEDINGS

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UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

Public Meeting:

Mine Safety and Health
Administration

Pages: 1 through 160

Place: Portland, Oregon

Date: December 15, 1998

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UNITED STATES DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

Public Meeting:

Mine Safety and Health
Administration

Tuesday,
December 15, 1998

Embassy Suites
Oak Room
7900 N.E. 2nd Ave.
Portland, Oregon

The above-entitled matter began at 8:05 p.m.
pursuant to notice.

MEMBERS OF THE MSHA PANEL:

KATHY ALEJANDRO, Chairperson
ROSLYN FONTAINE
KEVIN BURNS
ROD BRELAND

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P R O C E E D I N G S

8:05 a.m.

MS. ALEJANDRO: My name is Kathy Alejandro, and I am with metal and nonmetal mine safety and health with the Mine Safety and Health Administration of the U.S. Department of Labor, and on behalf of the Mine Safety and Health Administration, I would like to welcome you to the fourth of seven public meetings on regulations for miner safety and health training. These meetings are intended to give individuals and organizations, including miners and their representatives and mine operators, both large and small, an opportunity to present their views on the types of requirements that will result in the most effective miner safety and health training. These regulations would apply at those nonmetal surface mines where MSHA currently cannot enforce existing training requirements.

I would like to take this opportunity to introduce the members of the MSHA panel who are here with me this morning. To my left is Rosalyn Fontaine of the office of standards, regulation and variances with MSHA. To my immediate right is Kevin Burns, who is also with metal and nonmetal mine safety and health. To my far right is Rod Breland who is the western operations manager of the newly formed educational field services with MSHA.

Since 1979 MSHA has been guided by a rider to its

1 appropriations. The restriction currently states: "none of
2 the funds appropriate shall be obligated or expended to
3 carry out section 115 of the Federal Mine Safety and Health
4 Act of 1977 or to carry out that portion of section
5 104(g)(1) of such Act relating to the enforcement of any
6 training requirements, with respect to shell dredging, or
7 with respect to any sand, gravel, surface stone, surface,
8 clay, colloidal phosphate, or surface limestone mine."

9 In the Omnibus Budget passed by Congress on
10 October 21, 1998, MSHA was directed to: "work with the
11 affected industries, mine operators, workers, labor
12 organizations, and other affected and interested parties to
13 promulgate final training regulations for the affected
14 industries by September 30, 1999. It is understood that
15 these regulations are to be based on a draft submitted to
16 MSHA by the Coalition for Effective Miner Training no later
17 than February 1, 1999."

18 MSHA expects to publish a proposed regulation in
19 the Federal Register sometime in the early spring of 1999.

20 The regulations that MSHA will be developing must
21 include the minimum requirements in section 115 of the
22 Federal Mine Safety and Health Act of 1977. To summarize
23 those requirements: Section 115 provides that every mine
24 operator shall have a health and safety training program
25 that is approved by the Secretary of Labor and that complies

1 with certain requirements. Section 115 specifies that
2 surface miners are to receive no less than 24 hours of new
3 miner training, no less than eight hours of refresher
4 training annually, and task training for new work
5 assignments. Section 115 also requires that the training
6 cover specific subject areas; provides the training is to be
7 conducted during normal work hours at normal rates of pay;
8 requires that miners be reimbursed for additional costs they
9 incur incidental to this training; and provides that mine
10 operators must maintain miners' training certificates and
11 furnish such records to the miners.

12 In addition, MSHA is looking for suggestions and
13 comments as to how best to achieve effective miner safety
14 and health training consistent with the Mine Act, including
15 any additional requirements that should be included in the
16 proposed rule, and most importantly, why.

17 Three public meetings were held last week on this
18 subject in Northbrook, Illinois; Denver, Colorado; and
19 Albany, New York. Other public meetings have been scheduled
20 in three other locations in the coming weeks, including
21 Ontario, California, later this week; and Dallas, Texas, and
22 Atlanta, Georgia, after Christmas. These meetings are
23 intended to give as many individuals as possible and
24 organizations an opportunity to present their views.

25 This meeting will be conducted in an informal

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1 manner, and a court reporter is making a verbatim transcript
2 of the proceedings. Anyone who has not signed up in advance
3 to speak at the meeting and who wishes to do so should sign
4 up on the speakers' list, which is currently located on this
5 table, but I'll be asking if there's anyone here who wishes
6 to speak who has not signed up. We also ask that everyone
7 who is here today, whether or not you wish to speak, to sign
8 the attendance sheet which I believe is now back on the
9 little table in the back of the room.

10 Anyone who wishes may also submit written
11 statements and information to us during the course of this
12 meeting, and we will include this as part of the record when
13 a proposed rule is developed. You may also send us written
14 comments after the meeting has concluded if you wish.
15 Although there is no formal deadline for these written
16 submissions, I would encourage you to submit anything that
17 you wish to be considered on or before February 1st of 1999
18 to insure that your opinions are taken into account as we
19 develop the proposed rule. Although we are most interested
20 in what you have to say to us, we will also attempt to
21 answer any questions you may have to clarify the process and
22 the purpose of this meeting.

23 We are specifically interested in comments on
24 certain issues and certain areas, although we certainly
25 encourage you to comment on any issue related to miner

1 safety and health training at currently exempt mines. These
2 issues were outlined in the November 3rd Federal Register
3 notice that announced the schedule of public meetings, and
4 I'm going to summarize these issues briefly for you now.

5 Should certain terms, including "new miner" and
6 "experienced miner" be defined? Which subjects should be
7 taught before a new miner is assigned work, even if the work
8 is done under close supervision? Should training for
9 inexperienced miners be given all at once or over a period
10 of time, such as several weeks or months? Should
11 supervisors be subject to the same training requirements as
12 miners? Should task training be required whenever a miner
13 receives a work assignment that involves new and unfamiliar
14 tasks? Should specific subject areas be covered during
15 annual refresher training? If so, what subject areas should
16 be included? Can the eight hours of annual refresher
17 training required by the Mine Act be completed in segments
18 of training lasting less than 30 minutes? Should the
19 records of training be kept by the mine operator at the mine
20 site, or can they be kept at other locations? Finally,
21 should there be minimum qualifications for persons who
22 conduct miner training? If so, what minimum qualifications
23 are appropriate?

24 I would now like to introduce the first speaker
25 this morning. We ask that all speakers state and spell

1 their names for the court reporter before beginning their
2 presentation. Thank you very much.

3 We have one speaker signed up this morning,
4 although I certainly hope that others of you in the audience
5 will choose to participate. Mr. Rick Angstrom from OCAPA
6 has signed up to speak. Mr. Angstrom, could you -- I mean,
7 you can either work at the podium or if you'd prefer to sit
8 down and -- okay, great.

9 RICH ANGSTROM

10 MR. ANGSTROM: Good morning. My name is Rich
11 Angstrom. I'm the managing director for the Oregon Concrete
12 Aggregate Producers Association, and with me is Steve Moats.
13 He works for Morris Brothers, and he'll be here helping out
14 in answering any questions that you might have during the
15 course of the discussion.

16 MS. ALEJANDRO: Great.

17 MR. ANGSTROM: OCAPA is the local trade
18 association that deals with the sand and gravel industries.
19 We work with the legislature and the different government
20 agencies in promoting our industry and working with them on
21 regulations, et cetera, as they come down, and obviously,
22 we're also an association that does an awful lot of training
23 for the membership.

24 Safety, obviously, is one of the most important
25 aspects of life in general but certainly for the miners and

1 mining industry. Nobody -- as I've gone around and talked
2 to folks and have attended various meetings with MSHA,
3 education or, excuse me, safety has always been a primary
4 focus for our membership here. Unfortunately, we've had a
5 few deaths within Oregon over a period of years, one not too
6 long ago that happened to one of our members, and these are
7 things that we want to avoid happening and have appreciated
8 working with MSHA and some of the training activities that
9 we have to effectuate that.

10 One of the things I did want to say to this group,
11 Oregon, we've kind of done -- we've been working with MSHA
12 in providing an annual training course for the members.
13 Last year we did one that had about 250 attendees in it, and
14 it covered a range of topics that MSHA and OCAPA and our
15 membership put together and thought was important. One of
16 the things that we want to make sure that happens, as you
17 folks look at the rule -- and I've read through the rule,
18 and I think it allows for this, as you define operator, and
19 it would include associations for training -- is to allow
20 the Oregon model to continue to happen.

21 For the annual refresher course, it's actually
22 been a pretty good tool. We work with the MSHA folks, and
23 we set up training seminars around the state, so the
24 operators don't have to travel very far, and it's more
25 accommodating to them. We don't do it as a profit or as a

1 profit center for the association. We do it to basically
2 cover costs, and it's a service to our members, and that's
3 because of our commitment to the safety of the mine workers
4 out there. So to recap that point, it's important that as
5 you guys develop the rule that you leave it open enough for
6 different associations and different folks to be able to do
7 training.

8 I understand that there's no question that the
9 initial training for the employee really needs to be at the
10 site. He really needs to be out there and have the walk
11 around and have the hands on at the particular location.
12 The benefit for the different state associations or, for
13 that matter, maybe even some states may choose to hire --
14 you know, have a private -- one of the educational services
15 out there do the training, but in the initial phase, we all
16 agree that the miner needs to be out there walking around
17 the site and see what the hazards are and have the pointed
18 out to him and have those kinds of orientations done.

19 I think it would be very helpful, as I've thought
20 about this topic, to have -- and one of the things that
21 hopefully you can get some funding for as you develop this
22 is have a videotape or something like that put together for
23 the miners out there to go through certain hazards that they
24 need to look for. You know, it doesn't need to be an eight-
25 hour videotape, but certainly a videotape that the different

1 employers can show their new miners to help in the
2 orientation process.

3 I think one of the difficult challenges that you
4 folks have is you have mines of all different sizes, and you
5 have the really small ones, and I mean literally we have
6 some folks here that are one or two or three mine operators
7 that are members of ours. They're sitting right here. And
8 then we have operators that are the biggest in the state and
9 growing, and it creates a particular challenge for you guys
10 in devising a set of rules that's fair.

11 When you think about the small folks that are out
12 there, when you require an eight-hour annual training, you
13 essentially shut down that operation for a day, and that's
14 pretty expensive, and we're a margin business obviously.
15 It's something that you folks need to balance out when you
16 come up with these rules and be sensitive to the fact that
17 some folks can absorb that a lot easier. Others it's a
18 little more challenging and be patient in working with
19 folks.

20 I wanted to say one thing is I've been a
21 prosecutor for the last eight years, and I have a very rich
22 experience in enforcement, and when you start talking about
23 enforcement, there's many ways of approaching enforcement,
24 and I can tell you as a young DA, boy, I went by the book.
25 I actually have the experience of being a forest practices

1 officer, so I actually was kind of in the police officer's
2 role for a while, also, but, you know, I just went by the
3 book, and I hammered everybody as they came in, and it was
4 pretty blind to where people were at and their condition. I
5 think as I matured and moved up the ladder -- I ended up
6 being a senior prosecutor, and I've handled everything from
7 aggravated murder cases all the way on down -- is you get a
8 little different sense for people's perspectives of where
9 they're at in life, and not every enforcement -- it doesn't
10 always have to be -- it can be tailor made for the
11 individual.

12 When we're talking about training and especially
13 when you start talking about enforcement of training, which
14 is what this is going to ultimately lead to, we only have
15 some general comments on the actual proposals, but obviously
16 if our folks don't comply with those rules, there's going to
17 be enforcement aspects of it that come from it. My concern
18 is what I've been seeing in this particular state is a less
19 desire to work with the membership or the miners and help
20 improve mine conditions and more just slap down any citation
21 no matter how trivial it is. You know, in a sense, I'm
22 worried that we're going to see that with the training end
23 of it, too, and I would hope that there would be some
24 direction or guidance from Washington down to the local
25 folks that you really do need to decide when there is a

1 really significant violation. I know substantial and --
2 significant and substantial is the criteria, but it appears
3 to me that one of the things, if you're really trying to
4 promote safety and trying to work with folks to promote
5 safety -- and what we're talking about here is saving lives
6 -- that if there are small violations out there that folks
7 have a period of time to correct them before they come back
8 and are rechecked, and if they haven't fixed those minor
9 violations, then they get the citation.

10 Obviously if somebody has a significant and
11 substantial safety violation that they should know, there
12 should be no excuse, but I've seen citations coming in and
13 members talking about that for things that have been
14 overlooked in the past for years, and all of a sudden we're
15 having folks getting cited with 144 citations for not having
16 covers on light bulbs that are, you know, 40 feet in the air
17 in the shops and things like that. What it's doing is it's
18 creating a very harsh atmosphere. It's starting to become
19 -- instead of a cooperative effort in promoting safety, it's
20 becoming us versus them a little bit, and we want to move
21 away from that and back to the more partnership type of
22 issue or type of relationship.

23 I know when you wear all hats, when you're the
24 enforcement agency and you're the regulator, it's very, very
25 difficult to do that. As a matter of fact, in this state we

1 tend to have separated out some of that. We have examples
2 where that's not the case. Like DEQ, they wear both those
3 hats, but, for instance, in the fish and wildlife area, we
4 have the enforcement provision, and then we have the
5 regulatory provision, and they keep them separate, because
6 it's hard for a regulator to wear that hat and develop the
7 relationships and to help improve safety out there when they
8 come in and they wear that OSP or that cop hat at the same
9 time, and our folks know that.

10 So I know that this again is coming back -- at
11 some point it's going to come back to enforcement, lifting
12 that and making sure people do the training, and I think
13 that's appropriate, but I think that you need to engage
14 common sense and understand you have big operators, you have
15 small operators, you have new miners, you have people that
16 hold hats, and that the enforcement person needs to have a
17 little bit of perspective and discretion out there in
18 looking at where things are at. There are some things that
19 you have to be very consistent on, and obviously,
20 significant and substantial violations are things that need
21 consistency.

22 As far as the rules themselves, I've had a chance
23 to read through them, and I think they actually are very
24 good. It sounds like you guys have done a lot of work
25 talking with folks in the mining industry to make sure that

1 the proposed rules for training are well thought out and
2 many sides taken into account, and I can tell some of that
3 appears to have already been done.

4 MS. ALEJANDRO: Are you talking about the draft?

5 MR. ANGSTROM: The draft rules.

6 MS. ALEJANDRO: Okay. That's the earlier draft
7 from the Coalition.

8 MR. ANGSTROM: I'm talking -- oh, is that -- okay.

9 MS. ALEJANDRO: Yes. We haven't actually -- MSHA
10 has not developed anything, but there have been a couple of
11 drafts from the Coalition, which is the organization that is
12 going to be submitting their final draft proposed rule to us
13 before February 1st. So I mean, we're, you know, charged by
14 Congress to use that as a basis for the proposed rule that
15 we come up with, but we did not actually -- MSHA did not
16 develop what you've got.

17 MR. ANGSTROM: Right. I had -- was it a
18 resolution from Congress that's in the back here?

19 MS. ALEJANDRO: Yes.

20 MR. ANGSTROM: Okay. Yes. I read that, and I
21 thought that this was something put together. As a matter
22 of fact, I thought it had some language in there that it was
23 supposed to be done -- the second sentence, "The conferees
24 are pleased that the industry, the Coalition for Effective
25 Minor Training, MSHA, both acknowledge that the current

1 training regulations do not address" -- I'm not sure exactly
2 where it's at. I thought this was a more of a joint -- some
3 kind of joint --

4 MS. ALEJANDRO: No, no.

5 MR. ANGSTROM: Joint document. Well, it's a good
6 starting place. Let me just say that. Thank you for that
7 clarification.

8 One of the things, as I've talked to our
9 membership, that we want to make sure happens, and that is
10 the paperwork issue. We spend a lot of time filling out
11 paperwork for all sorts of agencies, and what we don't need
12 is a whole bunch more paperwork to fill out, but what we do
13 need is we need some consistency in the paperwork. So when
14 Dalton Sand & Gravel that's right over here fills out the
15 form, it's the same form that Morris Brothers fills out
16 that's sitting next to me, and that's going from your small
17 to your big, and I think that's going to be -- one, it's
18 fair to all the folks.

19 One of the things from the business side that's
20 very important is we like to know what's expected of us and
21 to have all the rules kind of laid out, so there's no
22 ambiguity in those kinds of things.

23 So the comment that I've been hearing is at least
24 that the paperwork needs to be consistent among the
25 operators and that it would be best -- and I don't know if

1 this is something -- how you guys would do this, but we
2 think it would be something that you folks would put
3 together since you're going to be developing the rules. The
4 paperwork to report at the same time should be developed at
5 the same -- along at the same time.

6 MS. ALEJANDRO: Are you talking about the actual
7 forms?

8 MR. ANGSTROM: Yeah, that the folks would be
9 filing and putting in the employee file. As I read through
10 this at least -- and I'm going from this --

11 MS. ALEJANDRO: Okay.

12 MR. ANGSTROM: -- is where my comments were based.
13 There's lot of requirements that paperwork be filled out for
14 this activity or this training or that training, and
15 frankly, if you think about it, if you're going to come in
16 and you're going to enforce some kind of training rule,
17 there's got to be some way to be able to do that, right?
18 And what needs to be done there is consistency, and
19 hopefully you guys would do that, so you don't have a bunch
20 of forms.

21 What you'll find is you'll have some folks that
22 will have real elaborate forms and some folks that will just
23 fill something out handwritten on a scrap piece of paper and
24 throw it in the file some place, and I think that would be
25 -- I think that would lead to some enforcement problems as

1 well as some consistency problems in making sure training is
2 done uniformly around the state.

3 The one thing is on the -- referring to this
4 again, that there be compliance within 60 days -- let's see,
5 the 24 hours would be -- 24-hour training would be done
6 within 60 days, and the first eight hours would be done
7 before the person is put out on the site, and the remaining
8 16 would be done sometime in that 60-day period.

9 The comments I've heard on that issue -- and you
10 think kind of wearing your employer hat, and I came out kind
11 on the government side, and we had our probation period for
12 six -- you know, it was kind of that six-month period. You
13 didn't know if you were going to be on or be off, and people
14 during that probation period tend to -- when the probation
15 period is up, usually you have a good sense of who is going
16 to stay and who is not, and that tends to be the time where
17 people are let go. Sometimes, you know, it's not going to
18 work out earlier than that.

19 It would be an expense, and it seems to me that
20 the best approach to that would be within the reasonable
21 probation period. I know some people have a year. I don't
22 know if that's reasonable, but I certainly think six months
23 to get that other 24 hours or 16 hours of training in so the
24 employer knows that he's going to actually keep that person
25 on board. Now, he can do it sooner than that if he knows

1 this is a good employee.

2 What you do, do by doing that, you may have kind
3 of a collateral effect of having an employer making a
4 determination, well, you know, I'm going to waste two more
5 days and pay this guy for nothing, and instead of working
6 with the guy, you know, the new employee and trying to, you
7 know, see if it's just kind of a new -- you know, he's new
8 to the mining industry and it's taking him a while to get
9 on, they may make some decisions earlier. They may not be
10 as fair to the new employee himself. So it appears to me
11 that a probation period, it needs to kind of match that
12 probation period, and 60 days, that seems kind of arbitrary
13 and odd. I don't know what your guys' thoughts were on
14 that. That might be useful for the folks here to know what
15 the thought process was on that.

16 The other thing on that is that the timing of this
17 rule is fairly important, and to take someone out for two
18 days during June when the construction season is booming is
19 one thing to finish off the training. It's another thing to
20 do it in January and February when the rains come and we're
21 all kind of sitting a little bit idle, and frankly, that's
22 how we try to do our programs here at OCAPA is during that
23 idle time, so we're not disruptive in the mining process.
24 When this rule comes into effect in September, all of a
25 sudden you're going to find that folks are going to have to

1 start complying within 60 days getting those 24 hours in
2 right in the -- that really is the heat. I mean, you know,
3 usually you got all of those construction projects getting
4 backed right up into September, October, November. You
5 know, everything gets kind of mad in the construction
6 industry right around that period of time, and then to pull
7 somebody, you know, basically -- and I got to say this, too.
8 When you pull someone out, give them training, you know, it
9 may six people to run a crew for a mining operation. You
10 pull a person out to do that, you shut that operation down,
11 or you're going to have to do, you know, some other -- find
12 some other alternative to that, but there is that kind of
13 collateral consequence, and folks just don't have extra
14 people hanging around to come in for someone, you know, for
15 the training period.

16 Let's see, I think I covered my points. I wanted
17 for just a second just to ask Steve Moats sitting next to me
18 if I've left out anything or if he's had any comments.

19 STEVE MOATS

20 MR. MOATS: The only -- speak down here? My
21 comment would be in that new miner training would task
22 training be in addition to the 24 hours of new miner
23 training?

24 MS. ALEJANDRO: Yes. I mean, I think that that's
25 generally the way that we've looked at it traditionally, I

1 mean in part 48, is that there's specific requirements for
2 initial training, 24 hours, eight hours of annual refresher
3 and then task training on top of that for new tasks. So I
4 think that, you know -- I mean, we can talk about it, but I
5 mean, I certainly have been thinking this task training is
6 something that's separate and apart from annual refresher
7 retraining.

8 MR. MOATS: Okay. Are you going to get the rest
9 of these, certification of trainer?

10 MR. ANGSTROM: Go ahead.

11 MR. MOATS: The other question that comes to mind
12 is certifying our trainees. If we truly go site specific --

13 MS. ALEJANDRO: Right.

14 MR. MOATS: -- obviously we have to have what you
15 bring up, competent trainers --

16 MS. ALEJANDRO: Right.

17 MR. MOATS: -- and would that be training sessions
18 through your people through your training education that
19 you're going to bring into Oregon?

20 MS. ALEJANDRO: Well, I mean, that's wide open, I
21 mean, because the Act itself does not have minimum
22 requirements for qualifications for people who provide
23 training.

24 MR. MOATS: Yes.

25 MS. ALEJANDRO: So as far as, you know, when we're

1 talking about this rule, I mean, we've got a lot of
2 flexibility, and I can tell you -- I mean, in the three
3 meetings that we've had up till now, I mean, we've had a
4 pretty wide range of comments. Some people believe that the
5 model ought to be what's done under part 48 right now, which
6 is, you know, formal approval, instructor approval process.
7 I mean, other people have been very strong in saying that
8 they think that the best training is going to be given by
9 those people who are on site who are familiar with the
10 operation, and then if you impose too many requirements on
11 people, you know, in those categories, then you're going to
12 make it very hard for them to give effective training. And
13 I mean essentially -- I mean, you're saying -- you know, you
14 could say that it's a competent person, and there's no
15 formal approval process.

16 MR. MOATS: Right.

17 MS. ALEJANDRO: So I mean, it's really been all
18 over the map. So I mean, you know, we would appreciate you
19 addressing that issue.

20 MR. MOATS: One of the things that we've done --
21 and I can't speak for everybody in here, but we went through
22 supervisor training with your people in early nineties, and
23 we have been putting on this function since '90, and your
24 people have signed -- we have two basically qualified
25 trainers in our company that have been signed off by your

1 people, and our question is obviously if we go to each site
2 and we got to incremental training, that's a full-time job
3 for one or two trainers for as many sites as we have. So,
4 you know, if you compound that in 30-minute increments over
5 a course of the year for refresher training course, you
6 know, times that by 16, like I said, that is going to be
7 very difficult.

8 So I would encourage MSHA to put on a certificate
9 of training course for the supervisors so that we can do --
10 so we are qualified and competent in task training and
11 documentation and be more site specific if that's the way
12 that we choose to do this.

13 MS. ALEJANDRO: Okay. All right. Do you have
14 anything else? I've got a couple questions actually if you
15 have nothing further.

16 MS. ANGSTROM: I'm done with my list.

17 MR. MOATS: Go ahead with --

18 MS. ALEJANDRO: Excuse me?

19 MR. ANGSTROM: You had a question?

20 MS. ALEJANDRO: Oh, okay. Mr. Angstrom, you said
21 that your organization provides annual training for your
22 members?

23 MR. ANGSTROM: Right.

24 MS. ALEJANDRO: Is it annual refresher training
25 for miners? Is that what you're talking about?

1 MR. ANGSTROM: What we did last year, because of a
2 couple of deaths that happened and I think a request from
3 our members, is we put on a training course in combination
4 with MSHA that lasted a day throughout various parts of the
5 state, and total there was 250 miners that attended it, and
6 it was a good way of dealing with -- from our perspective, a
7 good way of dealing with the annual requirement that MSHA or
8 under -- that's in the rules themselves. I know they're not
9 being enforced, but it's within the rule, and my point was
10 that what we didn't want is for you to adopt a rule that
11 would prevent that kind of thing.

12 It's easy for the state association, who
13 represents a broad spectrum -- and we have like 95 percent
14 of the folks within our association -- to hit a broad -- you
15 know, hit a broad number, a broad -- we could have a broad
16 coverage working with MSHA and the state association, and we
17 bring in speakers and do all of those kinds of things to
18 cover certain topics that are worked out, whether it's
19 through a committee or with MSHA themselves. We sit down
20 and talk with the different operators what seems to be of
21 issue.

22 For instance, I think I brought a copy of it.
23 It's probably sitting back there, but I actually brought a
24 copy of the agenda from our last -- let me just, if I might,
25 hand you guys a copy of this.

1 MS. ALEJANDRO: Sure, yes. We'll put it in the
2 record.

3 MR. ANGSTROM: I only have four copies.

4 MS. ALEJANDRO: That's all right.

5 MR. ANGSTROM: And, you know, these topics would
6 change obviously from year to year, you know, whatever seems
7 to be the hot issues around the country.

8 MS. ALEJANDRO: Right.

9 MR. ANGSTROM: But it's a good way of just
10 covering -- you know, getting to a whole bunch of folks, and
11 this was the first year we did it, and we had 250. I'm sure
12 -- and we're going to continue. As a matter of fact, we've
13 got other programs scheduled that start, I think, in
14 February, either in January or February. You know, we're
15 starting do other mine safety programs, the next year
16 series, and what we do is we tour around the state, so we
17 don't just do it in one isolated location, and we go to
18 different places so it's convenient for the folks to come
19 in, and, you know, they're close to home. They don't have a
20 lot of travel time and expenses renting hotel rooms and
21 things of that nature. It's working out very well. What we
22 don't want is something -- for some rule to prevent that.

23 MS. ALEJANDRO: Yes. I guess that was my next
24 question. Just out of curiosity, I mean, what kind of
25 requirement were you thinking might preclude that? I mean

1 --

2 MR. ANGSTROM: Well, I noticed in here that it
3 doesn't seem -- it seems like when you talk about parties
4 eligible to conduct training, you've included associations
5 of mine operations within that.

6 MS. ALEJANDRO: Okay.

7 MR. ANGSTROM: And I think we're covered, but, you
8 know, that's draft.

9 MS. ALEJANDRO: Okay. So you're basically saying
10 -- I mean, to the extent that the rule lists out who is
11 eligible to provide training that you don't want it to be so
12 restrictive to make it impossible for you to do the kinds of
13 things that you've already done?

14 MR. ANGSTROM: You know, there's lots of
15 collateral benefits when the state associations work with
16 MSHA. That's kind of that partnering, you know --

17 MS. ALEJANDRO: Right.

18 MR. ANGSTROM: -- and just kind of pulling in the
19 same direction, and it's a lot better than head butting, and
20 it just creates a better atmosphere for the miners in
21 general.

22 MS. ALEJANDRO: Okay. I had a couple of other
23 questions, and I'm sure that other people on the panel have
24 a couple questions. You indicated that you believe that the
25 initial training -- and I guess you're talking about the 24

1 hours of initial new miner --

2 MR. ANGSTROM: Right.

3 MS. ALEJANDRO: -- training -- was best provided
4 at the mine site. I mean, are you saying all of it should
5 be provided at the mine site, I mean some component of it
6 should be, or I mean, are you saying the classroom training
7 is not an important part of the initial miner training? I
8 guess I'm just looking for you to --

9 MR. ANGSTROM: No, no.

10 MS. ALEJANDRO: Can you expand on that?

11 MR. ANGSTROM: We're not -- this is just -- I'm
12 speaking from my perspective and after visiting with folks,
13 and I'm sure there's lots of different perspectives out
14 there. What I'm saying is that a large component of that
15 initial 24-month or 24-hour training component needs to be
16 at the site. The person really needs to be out there
17 walking around looking at stuff, having the hazards pointed
18 out to them, sitting down meeting, you know, who the staff
19 are and who folks are and what's, you know, the command
20 system for that particular company.

21 Some things like if it's the first aid training
22 and those kinds of things could be done elsewhere --

23 MS. ALEJANDRO: Okay.

24 MR. ANGSTROM: -- within that 24 months, but, you
25 know, we're all sensitive to the fact that if you're going

1 to -- if you're really talking about saving lives and
2 preventing injury, it needs to be out there where the person
3 can kind of see what's up and have that kind of hands on
4 with the staff at the mine itself.

5 On that question, do you have any --?

6 MR. MOATS: I'd just like to add one thing for the
7 small miners is for our staffing, we have a training
8 education department corporately, and it's easy for us to go
9 through the orientation and documentation process for the
10 initial eight hours, and after that, it's more of a
11 supervised, hands-on training at the site.

12 MS. ALEJANDRO: Yes.

13 MR. MOATS: You know, pertains to their job, and,
14 you know, talking with some of the smaller operators, they
15 don't have anything. So, you know, this is why Rich is
16 asking on behalf of all of us miners here in Oregon that we
17 have consistent, formal documentation that we can all fill
18 out that your inspectors, when they come on site and they
19 want to see our paperwork, we're all on the same page. So I
20 would hope that we would do that.

21 MS. ALEJANDRO: Yes. Actually, my next question
22 is on that issue. I mean, you seem to be saying, you know,
23 you want a standard form so everybody knows what the
24 requirements are and there's no uncertainty and its
25 consistent. I mean, there are others who would argue that

1 they want the flexibility, you know, to come up with their
2 own method of keeping records, and just so long as it's got
3 the minimum information that the rule might require, it
4 doesn't really matter. They like to have, you know, the
5 ability to keep their records the way they choose. I mean,
6 do you have any comments on that?

7 MR. ANGSTROM: It can be both.

8 MS. ALEJANDRO: Okay.

9 MR. ANGSTROM: You know, obviously somebody -- if
10 you guys devise a form to have folks fill out that covers
11 all of those particular criteria --

12 MS. ALEJANDRO: So you're looking for us maybe to
13 give you all a form that you can choose to use if you want
14 to but you don't have to?

15 MR. ANGSTROM: If the operator chooses not to, he
16 still has to comply with the requirements.

17 MS. ALEJANDRO: Okay.

18 MR. ANGSTROM: And that doesn't mean that forms
19 aren't evolutionary, and you wouldn't take comments and
20 maybe see a way of reducing paperwork that the operators
21 over time would come up with. I mean, that's good
22 government from our perspective, but, you know, so if the
23 company is large enough and doesn't like the type of bond
24 that you put your form on that they could choose to do it
25 differently as long as they cover all of the criteria that

1 are listed in the rule, but I think where I'm really getting
2 at is I don't think you're going to -- the big operators
3 like maybe Morris Brothers, who has a training person, may
4 do that, but I can't tell you Dalton Rock would use your
5 form.

6 MS. ALEJANDRO: Right.

7 MR. ANGSTROM: I can tell you a lot of the smaller
8 folks would use your form because they know it's safe. They
9 know if they fill it out, they're going to be protected.

10 MS. ALEJANDRO: Right, right.

11 MR. ANGSTROM: You know, they're digging rock.
12 You know, the smaller guys are out -- they're the miners.
13 They're the owner, operator and miner all at the same time.
14 It's a little different in the bigger companies.

15 MS. ALEJANDRO: I have one more question, and
16 there may be others from the panel. You touched on the
17 issue of, you know, once the rule is published and our
18 deadline is September 30, 1999, then, you know, there's
19 going to be some time for the industry to come into
20 compliance, and that is one of the issues that has come up
21 at some of our earlier meetings, how long beyond the date of
22 the publication in the Federal Register of a final rule
23 should we allow for the industry to come into compliance
24 with whatever rules we come up with. Now, obviously, that's
25 going to depend to a certain extent on what these final

1 rules look like, but I mean, just as a general matter, I
2 mean, do you have any sense for what an appropriate time
3 period compliance deadline would be for these training
4 rules?

5 (Pause.)

6 MR. ANGSTROM: Yes. We kibitzed on that issue.
7 It seems to me -- because the discussion I talked about
8 earlier about the timing of September 1st or 30th or
9 whatever it was --

10 MS. ALEJANDRO: The 30th, yes.

11 MR. ANGSTROM: -- is not great timing from the
12 industry's perspective --

13 MS. ALEJANDRO: Right.

14 MR. ANGSTROM: -- but the 1st of March would be an
15 appropriate time. It would give the folks at least the
16 winter, and really it should be done, you know, the end of
17 December, January, February time frame.

18 MS. ALEJANDRO: So you're talking at least six
19 months past or about six months past the date of
20 publication?

21 MR. ANGSTROM: Yes.

22 MS. ALEJANDRO: Okay, all right. I don't have
23 any. Do you?

24 MR. BURNS: Yes, a couple.

25 MS. ALEJANDRO: Okay, Kevin.

1 MR. BURNS: I guess a couple things. I looked
2 through your seminar format, and I think it looks pretty
3 good, and I certainly think we don't want to discourage this
4 sort of training. As a matter of fact, I think we want --
5 most people would want to encourage this sort of training.
6 Now, Rod can probably address this better because he's going
7 to be in charge of the education field service group for
8 MSHA.

9 UNIDENTIFIED VOICE: We're having an awful hard
10 time hearing.

11 MR. BURNS: Okay. Real tough? Okay. And I'm
12 sure Rod would -- like I said, he can address that, but I
13 would envision this as the sort of thing that Rod's group
14 wants to do. Is that correct?

15 MR. BRELAND: Yes, that's right.

16 MR. BURNS: So we're certainly not going to
17 preclude that, because this is really something that I think
18 -- if this went on everywhere, I think we would be very
19 happy, so I like that format, and whoever participated in
20 putting that together, you know, I commend them, because I
21 think it looks very good.

22 The issue of the new miner training and occurring
23 at the mine site, I think we would certainly encourage that,
24 and that was pretty much envisioned in the Mine Act, also,
25 if you look at the discussion. They talked about the

1 importance of training the miners in the environment in
2 which they're going to work, and I agree with you there are
3 certain things that can be done in the classroom and maybe
4 better in the classroom like first aid or things like that.
5 Certainly miners' rights can be done in the classroom, but
6 in reality, almost everything can be done at the mine site
7 and done effectively. So we're not going to discourage
8 that, and I think in a lot of cases that's the most
9 appropriate place to do it.

10 MR. ANGSTROM: Well, I want to -- can I make a
11 comment on that?

12 MR. BURNS: Sure.

13 MR. ANGSTROM: I'll probably get in trouble from
14 some folks over this comment, but there's a difference in
15 learning abstract and hands on, concrete, concrete learning.

16 UNIDENTIFIED VOICE: Very quiet.

17 MR. ANGSTROM: Okay. I'm sorry. I'll yell. I'm
18 trying not to get myself in trouble, so I tone down.

19 MR. BURNS: Yes, there you go.

20 MS. ALEJANDRO: You won't get yourself in trouble.

21 MR. BURNS: I worked for an association, too, so I
22 understand where you're coming from.

23 MR. ANGSTROM: Many of the miners are -- you know,
24 they're not -- how do I want to say it? They're not the
25 most sophisticated folks in the world, and they're not

1 abstract thinkers from my hands-on dealing with a lot of
2 them, and I'm not talking about necessarily the owners, but
3 the guys that are actually out there, and that hands-on
4 learning is going to be the most effective way of teaching
5 them that, teaching them the material that they need to know
6 to protect themselves. It's one thing to learn in a
7 classroom, but as we all know -- I don't know if this is on.
8 This is as loud as I can talk.

9 As we all know, you know, the problem with
10 classroom learning is folks' attention span and how long you
11 can put them in a room, in a closed room and show them
12 things where they're going to really learn the material and
13 be able to apply it. That's one way of learning, you know,
14 and I'm not very good that way, frankly. The best way for
15 me to learn is to see someone do it and get out there with
16 my hands and do it, and, you know, the classroom thing, you
17 know, you got to cover that stuff, but I can tell you the
18 retention of that is the first ten minutes, and people
19 really wane after that.

20 MR. BURNS: I agree. I mean, you can talk about
21 blind spots as much as you want in a classroom, but it seems
22 to me if you take someone and put them in a haul truck or in
23 some sort of loader and let them actually see what that
24 person can see, even if that takes five minutes, that's much
25 more effective than talking about it for an hour for most

1 people. It would be for me. So I agree with that.

2 I guess -- and I think Kathy covered most of what
3 I wanted to talk about. I guess one of the things I'm
4 hearing is that you would recommend that the proposed rule
5 include the records -- the format for the records that will
6 be required so that people can comment on that.

7 MR. ANGSTROM: Yes.

8 MR. BURNS: Okay. And naturally, I personally
9 don't see anything why we couldn't put a form in there that
10 someone can fill out if they wish, you know, with a pen or a
11 format that someone can put in some sort of data base system
12 on their computer, and it would spit out the same
13 information. So I think that's also what you were
14 suggesting, and that would also allow one operator to know
15 what -- you know, if they're hiring somebody that works
16 somewhere else, they have a better idea of what that person
17 actually had versus right now they really don't know. I
18 imagine some people retrain miners just because they're not
19 really confident what that person had in the first place.

20 As far as the effective date, I guess there's a
21 number of effective dates that I would envision through this
22 final rule. One would be, you know, when would you have to
23 have a plan and instructors and something put together, and
24 then there would be an effective date to have the eight
25 hours completed, and it seems to me that we couldn't say you

1 don't have to train new miners for a year. I mean, I just
2 don't imagine that we could say that. I don't think -- I
3 don't necessarily think that's what people were suggesting.
4 Is that accurate?

5 MR. ANGSTROM: Yes, that's accurate. It would be
6 -- you couldn't -- when somebody comes on as a new miner,
7 they need that initial training right up-front.

8 MR. BURNS: Okay. I just wanted to clear that up.
9 It is a -- I mean, it is a broader issue than just saying
10 six months, because there's all kinds of other elements
11 involved at least the way I see it.

12 MR. ANGSTROM: One of the things that -- I'm glad
13 you said that, because, you know, I hadn't quite separated
14 out in my mind that there's all the different effective
15 dates, too, and there are.

16 MR. BURNS: Yes.

17 MR. ANGSTROM: And one of them that Steve was
18 telling me about on the way down here is well, when this
19 goes into effect, when do you have to get that annual
20 renewal in. Do you got until next September 1 before you --
21 or September 30th before you have to get that done, or do
22 you have to get it done within, you know, that short time
23 period after the law goes into effect? That annual
24 refresher course, you know, when is the time for folks to
25 get that done? Do they have a year from that point to get

1 that in for the experienced miner? I don't know. I mean,
2 we would think it would be a year.

3 MS. ALEJANDRO: Yes. I mean, obviously, that
4 would be something that would have to be specified, you
5 know, made pretty clear in the rule as far as, you know,
6 what point do these requirements kick in and what, you know,
7 time frame are you talking about, so that needs to be
8 addressed.

9 MR. BURNS: Yes, and we've asked that at some of
10 the other hearings. I think, you know, we want to try to
11 share what we heard at the other hearings, too, or at the
12 other meetings. Sorry. But we asked the question of some
13 of the state grants people, and they indicated that they
14 really could not do -- some of the states grants people
15 indicated that they could not do the annual refresher
16 training in 90 days for everybody in the state, so we're not
17 looking to overburden the system, and I don't want to -- I
18 wouldn't envision having an effective date for the various
19 things that would make it more difficult to do the new miner
20 training for the new miners, because I think that's the most
21 important. So I think based upon what we hear, we're going
22 to have come up with a good logical reasoning, you know,
23 behind these effective dates.

24 MR. ANGSTROM: One of the things I think that will
25 help -- one of the things that I think will help facilitate

1 that is while you're in the development phase of this that
2 the field folks at MSHA are out there working with folks and
3 looking at the training programs that they have -- some of
4 the folks have in place, and, you know, you can start that
5 transition. It doesn't have to be September 30th. It could
6 be in the interim here from February 1 on, and I think the
7 folks at MSHA, the field folks out there or their
8 supervisors, should be open to looking at different training
9 programs that some of the members do have and see if that
10 would be -- if they would comply with the rules that are
11 being proposed, because that certainly gives those operators
12 that are already having training programs in place a chance
13 to change those and get them into compliance with what the
14 rule will be way beforehand.

15 MR. BURNS: Okay. I think that's a good comment,
16 and I think we ought to do that, and I think Rod is probably
17 going to be doing that. I hate to speak for Rod, and I
18 don't want to plan out his next year's work.

19 I just wanted to answer one of your questions. As
20 far as, you know, where did the 60 days come from, you know,
21 for the final 16, when part 48 was proposed, it was proposed
22 to require 24 hours before they started work, and the 60
23 days -- the best -- I could not find any real, you know,
24 rational reason why that 60 days came up, but it was
25 suggested in the comments or in that rule making that

1 perhaps 60 days should be allowed to finish the following
2 16. I'm reasonably certain that it's not based upon any
3 sort of research or anything like that. It was a number
4 that some group came up with, and it was agreed upon in part
5 48, but originally part 48 as proposed did not allow any --
6 it required the 24 right up-front. I don't know if that
7 helps you out. That is where it came from. It came from
8 the part 48 rule making.

9 MR. ANGSTROM: I kind of suspected it might have
10 been some kind of compromise discussion, because I would
11 envision that folks would want the 24 hours, you know, right
12 up-front, and it just appeared that 60 days was arbitrary
13 and probably was a compromise from what would have made
14 sense. I mean, what makes sense to me is you either do it
15 up-front or you do it within the probation period. Both of
16 those have rational explanations for them.

17 MR. BURNS: Yes.

18 MR. ANGSTROM: Sixty days doesn't.

19 MR. BURNS: If I remember correctly, the
20 probationary period and turnover was part of the rationale
21 for that 60 days. I can pull out the record and send that
22 to you if you want, but I'm pretty sure that that was what
23 was discussed in the rule making, that that 60 days was
24 needed because, you know, the person may not even work for
25 more than a week, and you shouldn't be training somebody for

1 three days when they might not make it through the week, and
2 that was part of the record I'm fairly certain.

3 I guess your suggestion is that 60 days doesn't --
4 maybe that was true 20 years ago, but today it's more -- the
5 probationary periods are more like six months.

6 MR. ANGSTROM: Yes. I mean, you know, labor law
7 is such that people have a reasonable period of time, and
8 the employer should have a reasonable time to work with the
9 individual to see if he's going to be somebody he's going to
10 keep before he makes a bigger step and investment.

11 You know, some folks say -- I think it's
12 interesting to listen to the discussion. Some folks thing
13 24 hours is not a lot of hours, and then there's other folks
14 -- and I tend to fall in that camp -- that aren't so far
15 from college who remember having three-hour courses through
16 the whole semester where I didn't put 24 hours into them,
17 and they were pretty intensive, and actually 24 hours of
18 course work is hard. The hard part of making it all up-
19 front, I think, from the learning perspective is if you make
20 it all up-front and you crowd it in too much, you reduce the
21 person's ability to learn it, and sometimes hour blocks are
22 a lot more effective training, and that's why we -- you
23 know, that's why we train people on hour blocks than having
24 24 hours, three days -- you know, the first three days kind
25 of thing.

1 In this kind of scenario, if you stretch it out,
2 you could -- the person could do it in -- or the company
3 could do those 24 hours over that six-month block and put
4 them into those hour kinds of segments where they can work
5 it into their schedule a little bit better and actually have
6 a lot more effective training. I mean, nothing is worse
7 than sitting at a three-day seminar and hoping that the
8 coffee pot is full, and I noticed you guys didn't have any
9 back there.

10 MS. ALEJANDRO: No. We don't have the budget for
11 it.

12 MR. BURNS: We weren't planning on this lasting 24
13 hours.

14 MS. ALEJANDRO: Yes, that's right.

15 MR. BURNS: If it does, we'll have to get some
16 coffee.

17 MS. ALEJANDRO: Yes.

18 MR. BURNS: I guess on that matter, if Morris
19 Brothers or someone through your association -- if you have
20 some sort of outline on new miners' training, how it could
21 be spread out over that period of time, I think that would
22 help if you submitted that to the record rather than just,
23 you know, discussing this in the abstract. I think that
24 would be very helpful, and it should help us in formatting
25 the proposed rule.

1 MR. MOATS: Kevin, we have always encouraged MSHA
2 to participate in helping us put together these annual
3 refresher training courses. We have a full-fledged video
4 department. You know, I recommended to John Widows the
5 other day that if it -- we were talking about this
6 documentation, and if they needed assistance that we would
7 help provide that if needed, because we do clearly want
8 everybody to be on the same level of enforcement as us folks
9 but on the same -- like I said before with the small miners,
10 it's very difficult. A lot of the small miners are owner-
11 operators, so it is tough for them.

12 MR. ANGSTROM: I think I said 24 month again, and
13 I meant hour.

14 MR. BURNS: Yes.

15 MS. ALEJANDRO: We understand. Yes, we
16 understand.

17 MR. ANGSTROM: I said it a couple times.

18 MR. BURNS: That's all right. I've done that
19 myself. Once you start making a mistake like that, it just
20 keeps coming back up.

21 MR. ANGSTROM: It keeps coming.

22 MR. BURNS: I'll turn it over to Rod.

23 MR. BRELAND: Okay. Yes, I have a few things I'd
24 like to follow up on. One, you mentioned, Mr. Angstrom,
25 early that you were suggesting we might follow the Oregon

1 model. Is that a -- do you have a formal model that you're
2 talking about, or is that --

3 MR. ANGSTROM: Well, it's not a -- I don't know if
4 I would call it a formal model, but I think it's a good
5 recipe of how MSHA and industry can work in a cooperative
6 fashion, and I think that's a model.

7 MR. BRELAND: Okay.

8 MR. ANGSTROM: I think anytime you have a public-
9 private partnership that's effective and it's training 250
10 people its first time out in a cooperative effort, you have
11 a recipe for a good model.

12 MR. BRELAND: Okay, thank you. Was this the
13 February session was the first time that you had a joint
14 effort between MSHA and industry?

15 MR. MOATS: No. We've done it for three years.

16 MR. ANGSTROM: First time I'm aware of it.

17 MR. BRELAND: I'm sorry.

18 MR. ANGSTROM: You have that history.

19 MR. MOATS: We've been actually doing joint
20 ventures with MSHA for, I'm going to recollect, clear back
21 five, six years ago. At first we did it in-house with our
22 own people and you folks, and then we opened it up the last
23 two years to all the miners. We were somewhat criticized
24 even in-house from our people for allowing other operators
25 being that we were the ones putting on the training session

1 with MSHA. So actually the history behind this is we've
2 always asked MSHA to participate in our training seminars
3 but not be the trainers. In the last three years we have
4 asked them to put on a portion of the training, and I'd like
5 to clear that up, but last year was the first year that we
6 partnered with OCAPA and MSHA only that put on four
7 different seminars last year throughout the state.

8 MR. BRELAND: Okay. You did four of them last
9 year. I see this list. I agree with Kevin Burns that this,
10 you know, looks like a good agenda, and it looks -- I
11 recognize some names, and some I don't, so does that mean
12 there was a mixture of industry and MSHA personnel
13 instructing here at the presentation?

14 MR. ANGSTROM: Yes, there was.

15 MR. BRELAND: Okay, that's good. Also, I remember
16 from a visit out here a few years back that Morris Sand &
17 Gravel did have some training programs that were pretty
18 advanced, I thought, for what I'd seen around the country in
19 some areas, but you also had a mentoring program if I
20 recall. Is that how you foresee tying in the spreading out
21 of some of this training, the 24-hour training?

22 MR. MOATS: As a matter of fact, we just had a
23 discussion last week at our managers' meeting that we have a
24 mentor driver, top drum program that is through our ready-
25 mix department. We are truly going to expand that into our

1 crushing facilities, our mine properties. It's just a
2 start. It's not that we have been lax in our training at
3 our company, but we want to take it to the next step. We
4 want to get videos, do more site specific and more emergency
5 response type actions that we haven't really done a lot in
6 the past.

7 MR. BRELAND: Okay. Do you presently do tracking
8 or documentation of the training that people receive and
9 keep a record of it?

10 MR. MOATS: Yes, we do.

11 MR. BRELAND: Okay. I'm just kind of following my
12 notes along as this discussion came out. One of the things
13 that came up some was on the enforcement issue, and, of
14 course, my particular group would not be in enforcement,
15 this educational field service group, but the issue you
16 brought up about some discretion and some guidance, do you
17 have some suggestions that you're talking about from an
18 enforcement perspective that you're proposing to make?

19 MR. ANGSTROM: Enforcement tends to be -- how it's
20 applied tends to be an individual -- tends to be tied more
21 to the individual than one might think. There's no question
22 that the laws are such -- and they're probably shades of
23 gray within them and interpretations within them, but really
24 from my experience in enforcement, what I've seen is that
25 every officer that's out there doing enforcement handles

1 situations differently. Some are very command and control,
2 and some are very compassionate in how they deal with
3 things, and I'm not saying one way is right or one way is
4 wrong.

5 I will say that if you take a posture that you're
6 going to make an us-versus-them kind of situation, you're
7 going to -- it's going to be a lot tougher to achieve your
8 goal, and hopefully the goal is to improve safety and
9 protect lives out in the mine, and, you know, there's the
10 old analogy, it's easier to draw a bee to honey than it is
11 to vinegar, and I can tell you that this is a group of folks
12 that perceive those kinds of -- that kind of mentality and
13 enforcement as a challenge, and they get very defensive and
14 loggerheads, you know, with the agency, and those things
15 spill over into all the other activities. That relationship
16 spills over everywhere. It will spill over into education.
17 It spills over to the regulatory folks, and it's not a very
18 good way of partnering with an agency that should -- it's
19 chief role should be regulatory and achieving the results,
20 you know, the result of getting folks trained and help with
21 -- improve safety out there.

22 Let me say this, because I think this will be a
23 little clearer if I say it this direction. There are
24 probably about 80 percent of the people will do what's right
25 because it's the right thing to do. There's going to be

1 always 10 or 15 percent are going to do what's right because
2 there's a law that says you have to do it. There's always
3 -- no matter what you do, there's always going to be 5
4 percent of the folks that you're going to have take
5 enforcement. Enforcement is a very important component of
6 any regulatory scheme. It's just the way human nature is.

7 I spent the last eight years dealing with the 5
8 percent, so, you know, it seems like -- at that point it
9 seemed like that was the majority of it from my perspective,
10 but I know in reality that's not the case.

11 If the agency takes a perspective that 100 percent
12 of the population out there requires enforcement, they're
13 going to create a problem for themselves as well as really
14 not achieving the message and achieving the goals that
15 should be priority to them, and so the enforcement person
16 that's out there in the field needs to understand that and
17 needs to understand when it's time to come down on somebody
18 that needs to be come down on and when it's time to say,
19 hey, listen, we've got two weeks, get this fixed, I'm going
20 to be back, and if it's not fixed, you're going to get a
21 citation, you know, something of that nature. Still you're
22 doing your job but achieving the safety perspective that you
23 need, and then everybody walks away from that feeling good.
24 We've achieved the goal of putting that cover over that
25 light bulb, and we did it without having to do an

1 enforcement action with whatever -- I know it's not court
2 time, but court time, you know, with all of those collateral
3 expenses that go along with it, and the partnering that you
4 do with the operator is tremendous. You'll get a lot more
5 from him in the long term as far as cooperation and help
6 than if you take that necessarily strict enforcement
7 perspective.

8 MR. BRELAND: Okay. Well, just to follow up on it
9 a little bit. I wasn't really addressing some of the safety
10 issues that you might have been issued citations on. You
11 think maybe we're a little too restrictive. We're looking
12 at this rule as trying to make it as performance oriented as
13 possible allowing flexibility. That makes a lot of areas
14 subjective, and that if we get into an issue of compliance,
15 if you have thoughts on that like certain subjects may be
16 not acceptable not to have been done, certain subjects we
17 could allow more time that would carry a lesser kind of
18 violation or there's a difference in say issuing an order
19 for somebody on training for an issue that's not maybe
20 safety related but part of the required subject, if you have
21 thoughts on that, you should put that in, you know, and
22 submit that. That's what I was talking about.

23 MR. ANGSTROM: I would, and I'll do that, but I
24 think I'm going to wait till you guys actually have your
25 draft rule --

1 MR. BRELAND: Okay.

2 MR. ANGSTROM: -- and then I'll make those
3 comments, because then I can actually sit down and say, you
4 know, here's going to be your gray area where people are
5 going to get into a rub, and you need to think of how you're
6 going to handle that from an enforcement perspective. Since
7 this is not your draft rule, it would be premature to
8 comment.

9 MR. BRELAND: Okay. Another issue that you didn't
10 bring up was on training plans and any submissions or not
11 you had about the paperwork issue on being consistent. Do
12 you have thoughts on training plans being at the mine sites
13 submitted, not submitted or what?

14 MR. ANGSTROM: I'm going to turn it -- do you have
15 thoughts on that, Steve?

16 MR. MOATS: Rod, could you clarify that? I don't
17 quite understand what you're --

18 MR. BRELAND: Well, presently under part 48 there
19 is a requirement to submit training plans for approval and
20 that you train in accordance to those. Any training program
21 would have to have some sort of outline. I assume you have
22 an outline. You have subjects that you cover that go even
23 beyond the requirements of the Act or present part 48. So I
24 guess the issue I'm asking is that do you have an idea what
25 you would do about submitting your training outline, plan,

1 whatever you would want to call it?

2 MR. MOATS: You know, once, again, we're working
3 with the MSHA folks. We at least at Morris Brothers have
4 always asked for their assistance, because who makes better
5 trainers than the people that are enforcing the regulations,
6 so that helps us. It also brings the awareness up of what's
7 out there, what are some of the hot topics that are
8 happening not only in Oregon but through the nation. So I
9 think we have been the front runners asking for approval, is
10 this good enough, is this good enough, and the response that
11 we get back is that we don't have any formal training
12 outlines, guidelines, you read the book as well as I read
13 the book, but surely we definitely would like to help
14 develop a training program that would satisfy your needs and
15 our needs.

16 MR. BRELAND: Okay.

17 MR. ANGSTROM: There's an opportunity there again
18 for you folks to -- as you put together all of this stuff,
19 to kind of come up with what maybe you think might be the
20 model training plan, something fairly simple to give the
21 smaller operator something to go from.

22 MS. ALEJANDRO: Yes. I mean, there is a -- I
23 think Rod is trying -- well, I may be mistaken, but I mean,
24 there is the issue of MSHA approval. I mean, the Act
25 provides that the program, the training plan shall be

1 approved by the Secretary of Labor, and so there's an issue
2 there, well, what exactly should that look like. I mean,
3 we've heard people say they have no problem with submitting
4 a plan for approval to MSHA, to the district manager up-
5 front. Other people seem comfortable with the idea of, you
6 know, putting in what you need to put in, in your program,
7 and then when the mine inspector comes to the mine site, I
8 mean, he could take a look at the plan at that point and
9 make a determination as to whether it looks like it fits the
10 bill or not. I mean, obviously, other people are
11 uncomfortable with the idea of, you know, different
12 inspectors at different times coming in and making a
13 subjective determination. So I don't know whether that was
14 --

15 MR. BRELAND: Yes, that's where I was head.

16 MS. ALEJANDRO: Yes.

17 MR. BRELAND: And one thing and some suggestions
18 have been that we might provide say a generic outline or
19 guide --

20 MS. ALEJANDRO: Right.

21 MR. BRELAND: -- for you to follow where you
22 augment that with more site specific needs whether it be the
23 task training or some other site specific kind of issues.
24 So you should be considering that when you're looking at
25 trying to reduce paperwork or make things consistent and

1 avoid too much objectivity with somebody else that comes
2 along, so that's why I was bringing it up.

3 MR. MOATS: I'd like to add one more suggestion is
4 definitely from our standpoint at Morris Brothers we would
5 not like to have it be Oregon MSHA/Morris Brothers' plan.
6 We would like to incorporate all the miners that wanted to
7 participate in a formal training program that would -- I
8 mean, I don't know these folks out here, but there's a lot
9 of other people that are doing training, too, so it's not
10 just to exclusively have us help MSHA in any program.

11 MR. BRELAND: Okay. And then another issue on the
12 paperwork where you talked about the guidelines -- and I
13 think Kathy addressed it pretty well on the flexibility.
14 We've had some people suggest that they could E-mail or fax.
15 The fact is we are in the process of developing an
16 electronic training plan that will be available on the
17 Internet, available with inspectors probably, certainly with
18 our educational field people, where they could help a small
19 operator, you know, fill in a plan that could be submitted
20 and copied for them and that type of thing, but that whole
21 issue needs to be thought about what goes back and forth and
22 whether it should be deemed approved if you're following
23 generally the guidelines, you know, so that's an issue you
24 have to consider.

25 One other thing on the delay or what we call the

1 8-16 split that we presently have now for the 60 days to
2 complete the 24 hour. I did hear you say that eight hours
3 up-front would seem reasonable. Are you talking about if
4 that's at the site actually assigning? Typically an
5 individual would be under close supervision the first eight
6 hours. Some minimum things that they had to be covered?
7 I'm not sure I understood what you meant.

8 MR. ANGSTROM: Go ahead.

9 MR. MOATS: I can only speak for our company, but
10 the first eight hours of training is basically a supervised
11 -- I mean, this individual doesn't even lift a finger that
12 day, so it is solely eight hours of training to fulfill all
13 the requirements under part 48, which they are now. Also,
14 my understanding is that part 48 is going to be altered --
15 the alteration is going to be under part 46 now. Is that --

16 MS. ALEJANDRO: Yes. The intention is -- I mean,
17 we're not taking part 48 and amending it. I mean, we're
18 starting a whole new part, separate part for the exempt
19 industries, I mean, and it's going to be separate and apart
20 from part 48. I mean, we have been getting some suggestions
21 from some people saying there are certain things in part 48
22 that they like and they want us to carry over, but, you
23 know, aside from the minimum requirements in section 115, I
24 mean, we're pretty much starting from scratch as far as what
25 goes in there.

1 MR. MOATS: The only other comment I'd like to
2 make, Rod, is eight hours in even one setting in a new
3 miner, it goes right over the top of his head. It's more --
4 even though you have initial eight hours of training, the
5 next 16 hours is refreshing his memory of what you just
6 trained him in eight hours, plus the individual job duty and
7 responsibility that that individual is going to have.

8 MR. BRELAND: Well, yes. I want to make it clear
9 that we're up here being objective about it. We're not
10 saying it should be eight hours. We're asking what you
11 think because you had talked about an initial eight hours
12 seemed reasonable, but I wasn't sure what you meant. Is
13 half of that going to be site specific? Is there going to
14 be some formal subjects covered like classroom type and then
15 some field or at the mine? You know, that would be
16 something that the industry as a whole would need some
17 flexibility on, but it would have to be addressed. I mean,
18 the small two-man sand and gravel that's hiring a seasonal
19 employee may have to treat that different than a large
20 company with a fairly formal program.

21 MR. MOATS: Yes.

22 MR. BRELAND: So that's what I was getting at.

23 MR. MOATS: I personally like the flexibility of
24 the incremental training. I would hate to cut that out and
25 the remaining 16 hours, but if it was for the full 24 hours

1 in a given period of time, we're definitely open for that.
2 We probably -- the only way we would change our policy is if
3 it was mandated by law.

4 MR. BRELAND: Okay. I'll try to pin you down one
5 more time. Are you saying that you don't propose any set
6 hours prior to actually going to the mine site for training?

7 MR. MOATS: I say -- I personally would speak for
8 our company. I would say, yes, you have to have a certain
9 amount of set hours, especially for a new miner. In our
10 opinion, it's --

11 MS. ALEJANDRO: Well, how much would that be? I
12 mean, and just to put this in context, I mean, at some of
13 the other meetings, I mean, we have people coming up and
14 saying there isn't that much to our operation. I mean, you
15 know, eight hours before you get started working, I mean,
16 that's, you know, too much for our particular operation.

17 MR. MOATS: For the things that we cover outside
18 of -- I would say we need a minimum of four hours for our
19 group to go through our orientation, and then the rest of
20 that is -- you know, it's location, you know, site specific,
21 just hop in the pickup, these are the boundaries, but, yeah,
22 as far as our classroom, it's a four hour.

23 MS. ALEJANDRO: Okay.

24 MR. BURNS: I guess I didn't want to -- if other
25 people here, you know, have an opinion on this, because I

1 think this has been an issue that's been discussed quite a
2 bit at the other meetings, and just following what's under
3 part 48 now, it says provided eight hours of training, shall
4 in all cases be given the new miners before they are
5 assigned work duties, and then it states, the following
6 portion shall be included in the eight hours of training,
7 introduction to work environment, hazard recognition, safety
8 and health aspects of the tasks to be assigned. Okay.

9 Now, what was suggested at some of the other
10 meetings was that -- you know, particularly a real small
11 sand and gravel operation that what's stated in here for
12 eight hours in their particular operation may only take two
13 hours to do it effectively, and so we really haven't heard
14 enough, I believe, from the really small operations. So I
15 would really like to hear from some of the small operators
16 here how -- you know, what they feel is appropriate to do
17 effective training versus -- because what we would like in
18 the end is that the compliance training is the same as the
19 effective miner training, and in order to do that, I think
20 we really do need to hear from the smaller operators. I can
21 only try to envision what it's like working with my three
22 brothers and figuring out how I'm going to train them, but
23 it would be helpful if we hear from those people with that
24 in mind, that if you're going to have someone sit in the
25 classroom for eight hours -- I mean, if that's the way rule

1 came out and they're just all glassy-eyed after two hours, I
2 don't think we've achieved anything except for compliance
3 training.

4 MR. MOATS: Yes. Kevin, I might add one more
5 thing to the draft that I seen, and I would agree with that,
6 that first aid, I think, should be pulled out of that,
7 because it is a lengthy training class, and for new miners,
8 you know, we have people on board. I think we all have
9 people on board that are first aid trained, CPR trained. I
10 agree with that.

11 MR. BURNS: Okay.

12 MS. ALEJANDRO: You mean as part of the initial
13 training that's given before they can start work or just as
14 part of the initial miner training at all?

15 MR. MOATS: Yes. I'd like to pull it from the
16 initial training --

17 MS. ALEJANDRO: Yes, because I'm thinking that
18 that's one of the -- that's in the Act. I mean that first
19 aid --

20 MR. MOATS: Okay.

21 MS. ALEJANDRO: -- is one of the subjects that's
22 in the Act, and I don't -- you know, I mean, if it's in
23 there, I'm pretty sure it's --

24 MR. BURNS: Yes, it is.

25 MR. MOATS: Yes, it is.

1 MS. ALEJANDRO: You know, we are in a position
2 where we would need to include it, because I mean, it's in
3 the statute.

4 MR. ANGSTROM: In the -- I got the statute in
5 front of me, and it talks about the 24 hours of training and
6 includes the first aid.

7 MS. ALEJANDRO: Yes.

8 MR. ANGSTROM: I don't know if folks actually --
9 how many folks have gone through the first aid training.
10 I've done it several times. It's a big course.

11 UNIDENTIFIED VOICE: It's eight hours.

12 MR. ANGSTROM: Yes. It takes a day.

13 UNIDENTIFIED VOICE: But that's a third of the
14 component if you're going to do it right.

15 MR. MOATS: For the first go around.

16 UNIDENTIFIED VOICE: That's right.

17 MR. MOATS: Yes.

18 MR. BURNS: Yes. And I guess along what you
19 suggested, it was suggested at some of the other meetings
20 that that first aid not be required before they start work,
21 but it could be better if they wait till there's a scheduled
22 class where there's a lot of miners from various mines that
23 can attend that and get that first aid training from someone
24 that's really qualified to do the first aid training rather
25 than just get it from whoever is the best person at the mine

1 who may not be that good as a trainer on that particular
2 subject.

3 MR. MOATS: Right.

4 MR. BURNS: Is that what you're suggesting, too?

5 MR. MOATS: Yes, and first aid training is
6 required under part 56 but not for every miner. So maybe a
7 company chooses not to train everybody that works on the
8 mine property.

9 MR. BRELAND: One of the things you might consider
10 in the comment period is -- as Kathy's pointed out, that's
11 in the Act, and we would be obligated to pay attention to
12 what's in the Act, but you could say what you would think
13 would be an appropriate amount of the kind -- even if it's
14 an introduction into first aid, as a part of that initial
15 session, and it might be an overview of what they ought to
16 be planning to take, and these are just things you've got to
17 consider, because we can't choose to ignore requirements in
18 the Act when we're developing the rule, but that would be
19 helpful if you have some ideas on it.

20 There are some short versions. I mean, Red Cross
21 does a two-hour course, I think. There are some shorter
22 versions, and it might be something to consider and just
23 think about that.

24 One other thing on the issue of the 8-16 split is
25 the turnover issue with a lot of seasonal operations, and I

1 think you've hit on that a little bit where you have your
2 down period of time in the winter months. Do you have a
3 feel for your industry or at least your company? What kind
4 of turnover do you have? Do these people work year round,
5 most of your employees, or do you have some that typically
6 come every season, or do you have a kind of regular turnover
7 percentage that are new to the company ever year?

8 MR. MOATS: At least speaking for Morris Brothers,
9 we have only a few operations that shut down seasonally six
10 to eight weeks, but outside of that, I can't speak for these
11 people.

12 MR. BRELAND: So you're pretty steady. That's
13 fine. You only can just what you know.

14 And then one other thing on the competent person.
15 You talked about you have presently two within your own
16 company that are certified or approved MSHA instructors, I
17 assume. Were you proposing that based on somebody's job as
18 say a site foreman or superintendent or whatever you call
19 your person-in-charge at the mine that they be designated
20 competent or defined to do instruction?

21 MR. MOATS: I'm going to let Rich here define
22 "competent," but if you tag the responsibility to a
23 supervisor, that supervisor may have only been with you a
24 short period of time, and that's difficult for him to be
25 specific to our operation. So we -- well, I mean, we don't

1 have a whole lot of turnover, but I can see that if we just
2 tag a foreman, supervisor, superintendent or location
3 manager -- but "competent" has been a very loose term even
4 from your enforcement people.

5 MR. BRELAND: Well, what have you -- I mean, when
6 I say "competent," have you got an idea how you would want
7 to select or qualifications you would expect for somebody to
8 be able to do the instruction? I might have been misleading
9 you when I said a superintendent. That's kind of what a lot
10 of people tend to go to, but if you are to select somebody
11 at a site as a person that the operator would consider
12 competent to teach these subjects or maybe they have some
13 portions they can do and others, would you have some way of
14 expecting that they demonstrate that they can teach? A lot
15 of times a very experienced equipment operator is not a good
16 instructor. On the other hand, lesser experienced might be
17 a very good instructor, so that's what I'm getting at.

18 MR. MOATS: For the industry, "competent" works
19 well for us, because -- but if it's -- but from a practical
20 standpoint, MSHA used to put on a supervisors' training
21 course that -- there are probably people in here that have
22 attended that, and it wasn't a certification training, but
23 they actually put on a supervisors' training course that
24 helped describe some of the areas and responsibilities of
25 the supervisor, and that's becoming more of a fear in our

1 people.

2 MR. BRELAND: Okay. And then just one other
3 thing. You said that you thought we should help with a
4 supervisory type course, and I guess that follows up on
5 that, but just to clarify, you know, we think that we should
6 be helpful, and especially this educational field service
7 group will be out there, but we're going to be a small
8 group, and there's no way that we're going to be able to
9 provide all the training. We would hope to provide a lot of
10 guidance, but we wouldn't be able to replace and do the
11 training that everybody is going to need, but providing
12 guidance is something we'd like to do.

13 MS. ALEJANDRO: Okay, thank you very much.

14 Is there anyone here who would like to speak?
15 Okay. I think what we're going to do is take a 15-minute
16 break before we -- and when we come back, you know, think
17 about maybe things that you would like to comment on. We'll
18 give you a short summary of the other issues that have come
19 up at the other meetings, and also, if you have not signed
20 the attendance sheet in the back, I would ask you to do so,
21 and I will also bring the speaker sheet back if you decide
22 you want to sign up and speak.

23 (Short recess.)

24 MS. ALEJANDRO: Back on the record.

25 The next speaker who is signed up is Bob Potts of

1 Welson Construction. Mr. Potts, when you come up, could you
2 spell your name for the court reporter?

3 (Pause.)

4 I guess there has been at least one person who has
5 asked for the address where to send in written comments, and
6 we can give -- if you need the address -- if you've got a
7 copy of the Notice of Hearing or Notice of Meeting -- and I
8 believe there were a couple copies back there, but maybe
9 they're gone. The Office of Standards, Regulations and
10 Variances at MSHA in Arlington, the address is given there,
11 and that is the address to send it to, but if you don't have
12 a copy of that notice or you don't know the address, I mean,
13 just feel free to come up to the -- you know, whatever this
14 is, this table, at a break or at the end of the meeting and
15 we'll give that information to you.

16 Mr. Potts?

17 BOB POTTS

18 MR. POTTS: Yes. My name is Bob Potts, B-o-b
19 P-o-t-t-s.

20 I just had a couple of short questions about the
21 training rider. One is I'm not a very eloquent speaker.
22 I'm a crusher hand. I don't --

23 MS. ALEJANDRO: That's okay.

24 MR. POTTS: I don't talk very well in front of
25 people, but, for instance, we're a highway contractor

1 running two portable rock crushers. Be doing, for instance,
2 a seven-mile highway job, the rock crushing would be the
3 mining, actual mining of the aggregates, the production of
4 the aggregate makes up 30 percent of the job.

5 The way I understand the rider, for instance, a
6 theoretical situation, a loader operator, my stockpile
7 operator doesn't show up that day, I could not go over to
8 another part of the operation and pull an untrained loader
9 operator and mine trained loader operator off that operation
10 and bring him into the crusher without having at least a
11 prior eight-hour training course with him, mining training
12 course. Is that correct?

13 MS. ALEJANDRO: I would say no. I mean, at this
14 point no, because the question that we're going to need to
15 answer as we develop the rule that would apply to that
16 operation is we've got -- I mean, 24 hours of initial miner
17 training has got to be given to your miners. I mean, that's
18 something that has got to be in the rule because that's
19 something that's in the Mine Act, but how many -- one of the
20 issues that we need to address is how much training -- you
21 know, I mean, whether it's an hour's or subject area, if
22 any, needs to be given to a miner before he actually starts
23 working an operation. So I mean, the Mine Act doesn't set
24 any minimums for that, but part 48 currently requires eight
25 hours of training before a miner can start work, and one of

1 the questions we have to answer here is, do we, you know, go
2 along with that eight hours that's in part 48, or is there,
3 you know, a lesser number of hours that we're going to
4 require, or maybe we just, you know, forget about hours
5 altogether and, you know, talk about, you know, covering
6 certain subject areas. So I guess -- you know, I don't know
7 whether that answers your question, but that's sort of where
8 we are right now.

9 MR. POTTS: I feel those are questions that need
10 to be addressed, and --

11 MS. ALEJANDRO: Do you have any -- I mean, do you
12 have any particular opinions on that?

13 MR. POTTS: Yes, I do. Most reputable highway
14 contracting companies that I worked with -- I've been in the
15 industry for approximately 20 years now -- will not take an
16 incompetent person and trust them with a half a million
17 dollar machine such as a loader, dozer. So normally those
18 people have training on the equipment before they ever step
19 on a mine site, or maybe they got the training at a mine
20 site. I know our company is very -- we're very safety
21 orientated, a safety program already in place with half hour
22 toolbox safety meetings roughly given by a competent person.
23 Would that act as part of the 24-hour training if it could
24 be given in a year's period?

25 We have the problem with turnover, as you guys

1 were stating earlier, where one of our next jobs will be on
2 the Utah border from Idaho to Utah. The nearest cities are
3 Salt Lake and Portland, basically, Salt Lake and Twin Falls.
4 To go onto -- for instance, we're on a portable plant. We
5 don't always know for sure what each operation, mining
6 operation is going to entail until we are there. For one
7 instance -- for one source and instance, we may use one
8 loader operator. For the next source, it may be six truck
9 drivers, so a company such as ours, I foresee you have to
10 have trained a large amount of people for the versatility to
11 go to different areas and different sources. We'll move a
12 plant nine times, ten times a year.

13 I can understand the eight hours training.
14 Personally, I'd like to see it approximately two to three
15 hours of a classroom type setting and then close supervised
16 work for the next five hours with some record taking of that
17 to where -- that's more task specific, and then the next 16
18 hours being covered in a safety meeting type situation where
19 you are covering the broad band of topics, the miners'
20 rights, and it could be an ongoing thing. One person that
21 may be on the site may not get his full 24 hours in a year
22 because he may only be on site two months; for instance, a
23 truck driver that going to stockpile, we may use him for two
24 months in that operation. Then he may be on a highway crew
25 for nine months hauling dirt to a fill site.

1 Short of training everybody in the company with 24
2 hours of MSHA training, shutting down and giving them 24
3 hours up-front, I don't see the feasibility of being able to
4 not have an ongoing training program such as a half hour
5 safety meeting given by a competent person.

6 I know in our operation now I'm the supervisor for
7 them. I have to have eight hours OSHA competency course,
8 16-hour crane certification, about 16 hours a year first
9 aid. So basically in a year's time I have about a week and
10 a half of training through different organizations, so I can
11 work, and a confined spaces course given by OSHA.

12 I feel personally that MSHA -- maybe the competent
13 person should have an eight-hour course or something to say
14 these are the topics that need to be discussed, so that us
15 being as a competent person knows what the topics are.

16 As somebody brought up earlier, I see a lot of
17 enforcement personnel from MSHA. There's a large varying
18 degree of what is and isn't right. So if something is
19 mandated, it needs to be black and white, this is what you
20 need to do. I've looked up on your Internet site your first
21 aid, for example. If you look at that on the Internet site,
22 it says you'll learn how to bandage and access your
23 emergency response systems and et cetera, et cetera, et
24 cetera, and this is what you'll be taught in your first aid
25 course to be certifiable for first aid. If this is

1 mandated, this is what I feel we need. We need to know what
2 needs to be there for us.

3 There's safety, and for what I see, safety in a
4 mine situation varies greatly from one mine could be water
5 problems. You'd have to address water. There's maybe high
6 walls. Portable plant, we get to see a lot of different
7 things in different areas, and each side is site specific,
8 and it's usually up to the competent person during a safety
9 meeting or during the time you're there, as they see
10 problems arise that have to be addressed, they should be
11 pulling the crew in on their weekly safety meeting and
12 saying, hey, you know, these high walls have to keep it berm
13 or the life vests are by the ponds, wear them. Whatever
14 needs to be addressed at a certain mine, I think that
15 training is more important than pulling a miner in or an
16 operator into a meeting and saying, here's your 24 hours
17 training, now go to it. To me, it's far more important to
18 be on the site and say, you know, there's a high wall, if
19 you don't keep a berm up, you're going to fall asleep and
20 back off of it and die. That, to me, is more important than
21 being able to show somebody videos, and they're going to
22 sleep through half of it and say I got 24 hours and good-
23 bye.

24 That's about all I had.

25 MS. ALEJANDRO: Mr. Potts, I've got a couple

1 questions. You didn't raise this issue when you were
2 talking about your site, but it's an issue that's been
3 raised by other people in some of the other meetings. Do
4 the people who are -- some or all of the people who work for
5 you, do they get training required by OSHA regulations?

6 MR. POTTS: The OSHA regulation, as far as I know,
7 is that there shall be a competent person, OSHA-competent
8 person on site.

9 MS. ALEJANDRO: Okay.

10 MR. POTTS: On all job sites.

11 MS. ALEJANDRO: All right.

12 MR. POTTS: Yes, our company has an OSHA competent
13 person on all job sites. I'm one of them. I probably go on
14 an OSHA -- take care of an OSHA job site once a year, but,
15 yes, I am card carrying, and yeah, that's the way our
16 company feels.

17 MS. ALEJANDRO: But the employees don't get OSHA
18 required training?

19 MR. POTTS: They get safety meetings weekly.

20 MS. ALEJANDRO: Okay.

21 MR. POTTS: Yes.

22 MS. ALEJANDRO: How long are those usually?

23 MR. POTTS: Usually last a half hour. Some show
24 videos. We tried to put together in our job site books a
25 52-week program, basically 52 topics, because I know as a

1 supervisor in the field, sometimes you can only talk about
2 fire extinguishers so long, and so we have some tools that
3 have been put out -- I don't even know where we got them --
4 that help give these half-hour meetings.

5 MS. ALEJANDRO: Yes. I mean, do your employees
6 typically, I mean, you know, spend time on mine sites and
7 also spend time on, you know, construction sites, OSHA
8 regulated construction sites? Do you have a lot of
9 intermixing?

10 MR. POTTS: Yes, we do.

11 MS. ALEJANDRO: Okay.

12 MR. POTTS: And that's where I see our biggest
13 problem coming in. For instance, as I came off a job and we
14 moved to a new site, instead of using one loader to
15 stockpile off a crusher, I'm now using six truck drivers.
16 Well, truck drivers are a pretty round and round bunch
17 anyway. They don't -- they move around a lot, and so it
18 would put a certain group of people out of work basically
19 because they do not have their mine training. I would have
20 to go down the list and say, yes, you can work here, no, you
21 can't.

22 It would be a very big managerial headache as far
23 as -- for instance, like I say, you're out in a remote area.
24 You've got your crew trained, and they have their 24-hour
25 training. Well, I need another loader operator for a day to

1 help out here. I can't move you on site even though you've
2 run loader for 25 years, a very competent loader operator,
3 but you're not MSHA -- you have not had your mine safety
4 training. To me, that's a big managerial headache. It's
5 just one more check you have to have against the name to go
6 to a site to work, and yet that person could have attended
7 safety meetings that covers a lot of the same things MSHA
8 covers.

9 MS. ALEJANDRO: Yes. Those would be the OSHA
10 safety talks?

11 MR. POTTS: Just safety talks, safety glasses,
12 fire extinguishers, seat belts. I mean, these are things
13 that you will cover in an OSHA meeting, too. They're
14 required by both of us, but I guess the labeling of the
15 meeting would have to maybe company-wide cover -- I don't
16 know how to address all that totally, but I think it does
17 need addressed.

18 MS. ALEJANDRO: Okay. I have one other question,
19 and some of the other people on the panel may have a
20 question, and I just want to clarify something that you
21 said. You said that the individuals who provide training
22 should have like an eight-hour course. I mean, is what
23 you're saying, I mean, people who are going to be giving
24 this training to miners that you think it's appropriate to
25 have them have some kind of training in how to give

1 training? I'm not quite sure what you meant by that.

2 MR. POTTS: I guess to me the person giving the
3 training should know what they -- an agenda that they need
4 to know what they are training.

5 MS. ALEJANDRO: Okay. You mean as far as as the
6 subject?

7 MR. POTTS: As far as a subject matter. They need
8 some training, and myself included. I've read most of the
9 rules that pertain to me, I hope. Usually the inspectors
10 can tell me which ones I missed.

11 MS. ALEJANDRO: Yes.

12 MR. POTTS: But there are a lot of rules there
13 that the person on site addressing the safety meeting should
14 be a competent person, and I feel that there's probably some
15 training or some type of -- and eight hours to me seems like
16 a lot, but some type of training for that person, and I
17 really feel personally that it should be given by MSHA to
18 where -- and made at the local offices to where it's
19 available without a lot of cost. If you're going to do the
20 -- I don't know. There's a lot of different ways to look at
21 it --

22 MS. ALEJANDRO: Yes.

23 MR. POTTS: -- but the person doing the training
24 should be competent in the field well enough to train.

25 MS. ALEJANDRO: Yes. I mean, we've had some

1 people say that the rule should be flexible enough to let
2 people who are good or, you know, knowledgeable and have
3 experience in certain areas give training on that particular
4 subject, you know, period. Other people have said, you
5 know, you need to use that experience, but in order to make
6 sure that people know how to give training, they need to
7 get, you know, some kind of a short course on how to make a
8 presentation and, you know, how to get a point across, I
9 guess, to an audience. And then there are other people, you
10 know, on the other end who think that, you know, there needs
11 to be a formal MSHA approval for instructors like there is
12 under part 48, so it's all over the map right now. Okay.

13 Do you have any questions?

14 MR. BRELAND: Just a couple things. I assume when
15 you said that you might get another loader operator that
16 would be like out of a batch plant or hot mix plant or
17 something?

18 MR. POTTS: Yes.

19 MR. BRELAND: That also works for you?

20 MR. POTTS: Yes.

21 MR. BRELAND: Okay. And then you've already made
22 a determination on the qualification of this equipment
23 operator, I assume, when you hired them, and that's what
24 you're talking about now. You just want to cross lines,
25 basically still doing the same work, just in a different

1 location.

2 MR. POTTS: That's correct. That's where I see a
3 big problem.

4 MR. BRELAND: Also, you talked about the truck
5 drivers, when you use them, that they might only be there a
6 couple of months, and I guess the question would be -- a
7 significant number of our (Indiscernible) fatalities are
8 contract truck drivers that come on mine sites and one thing
9 or another happens to them. How would you propose that we
10 would try to get training to those people? Assume they
11 don't work for you. You hire them as a subcontractor.

12 MR. POTTS: No, that's not true.

13 MR. BRELAND: They do work for you?

14 MR. POTTS: No. We have -- for instance, we have
15 26 trucks, 20, 30 trucks in the fleet. One job may not
16 require any haulage to pile other than a loader going to
17 stockpile. The next job may require I take five trucks out
18 of the fleet, and I'll use those five trucks to haul to a
19 pile.

20 MR. BRELAND: Well, was your understanding then
21 that maybe they'd have to have 24 hours of each mine site
22 they go to?

23 MR. POTTS: No. It would be my understanding to
24 work for the company at my mine site, at any mine site, they
25 would have to have 24 hours training. That truck driver may

1 not work -- truck drivers are seasonal in Idaho. I'm from
2 Idaho. We work seasonally. It seems like the older truck
3 drivers are out doing other things, hauling to a roadway if
4 you're building a highway, for instance, a fill, whatever,
5 on a highway job, hauling from stockpile to a job site, but
6 I'll take five of these truck drivers and haul to a
7 stockpile site. Now, I can't do that -- even though they're
8 competent truck drivers, they may have worked for us the
9 previous seven months hauling to different sites, but then I
10 have to have MSHA training on these five truck drivers,
11 whether it be a three hour plus the five hours of supervised
12 watching them, which I wouldn't have a problem doing that
13 site specific, but --.

14 MR. BRELAND: You're saying that they actually
15 work permanently for the company --

16 MR. POTTS: Yes.

17 MR. BRELAND: -- but you only use them as you need
18 to based on weather or whatever seasonal --

19 MR. POTTS: For the crusher part of it.

20 MR. BRELAND: For the crushing part.

21 MR. POTTS: The crushing, mining operations you
22 only need the truck drivers -- use them as you need them.

23 MR. BRELAND: If they had their 24 hours of
24 training, if they went to a mine site, you would only see
25 them needing a site specific. You talked about the

1 different kinds of hazard, whether it be water or high walls
2 and what have you. So I guess that would be -- you know,
3 we'd have some concerns if we had people that essentially
4 never got trained. That's what you said. You might have
5 them two months, and they may never have a reason to get the
6 24 hours. You mean in the year or in --

7 MR. POTTS: That's what I'm asking.

8 MR. BRELAND: Okay.

9 MR. POTTS: You know, do we take every --
10 basically 80 percent of our employees, even though 50
11 percent of them -- out of 150 to 200 people, I may use 40
12 people a year. How many of the employees we hire every year
13 do I need to give 24-hour training to? I may -- you know, I
14 understand the core group will get it, you know, your
15 operators on the job site that would stay with the plants
16 all the time, but the support personnel that come in and out
17 a lot --

18 MR. BRELAND: Did you say you had about 25 truck
19 drivers all the time?

20 MR. POTTS: Yes.

21 MR. BRELAND: And is there a percentage of those
22 that turnover that changes every year?

23 MR. POTTS: Oh, I'm sure in our business we have
24 probably a 30 percent turnover a year.

25 MR. BRELAND: So it would be the 30 percent that

1 you'd be needing to deal with to get the 24 hours every
2 year.

3 MR. POTTS: Every year.

4 MR. BRELAND: There would be some new group of
5 people that would need it if --

6 MR. POTTS: Every year.

7 MR. BRELAND: Okay. I'm just trying --

8 MR. POTTS: I mean, there again, I'm wondering is
9 if our OSHA safety meetings, MSHA safety meetings -- if our
10 safety meetings that we have throughout the company every
11 week would suffice to cover part of this 24-hour training.

12 MR. BRELAND: That's been brought up at least one
13 other time --

14 MS. ALEJANDRO: Yes.

15 MR. BRELAND: -- that I'm aware of where they want
16 some --

17 MS. ALEJANDRO: Kind of, you know --

18 MR. BRELAND: --reprocipocal type of agreement --

19 MS. ALEJANDRO: Right.

20 MR. BRELAND: -- where we would accept their
21 training and they accept our MSHA required training and
22 OSHA, and that's what, I guess, you're proposing.

23 MR. POTTS: Yes.

24 MR. BRELAND: If you're doing OSHA's required
25 subject training or meetings, could that be part of that.

1 MR. POTTS: Yes.

2 MR. BRELAND: Okay.

3 MR. POTTS: And I don't know if it's a true OSHA
4 requirement. I know our company just does it, and I'm just
5 wondering if that would suffice to cover a large part of
6 this MSHA training.

7 MS. ALEJANDRO: Yes. Well, I mean, that's
8 something that has been brought up a couple of times, and,
9 you know, people are training to satisfy OSHA requirements
10 and, you know, whether it would be possible for the rule to
11 be flexible enough to, you know, have that training, OSHA
12 training counted to satisfy the MSHA requirements, so we'll,
13 you know --

14 MR. BURNS: I think we'll have to look at that.
15 The OSHA rule is set up -- I mean, OSHA is set up somewhat
16 differently than MSHA. They don't have a part 48. The
17 individual OSHA standards require training, you know, on say
18 guarding and things like that, and it doesn't specify time,
19 but OSHA also has another requirement that the supervisor,
20 you know, go through -- you know, have a ten-hour part, so
21 it's more geared towards having a supervisor that's trained
22 under the OSHA requirements, and then also that they train
23 the individuals as they come into contact with hazards or
24 before they come into certain hazards.

25 But my experience with the OSHA training is there

1 an awful lot of crossover between hazards. So what you're
2 suggesting, I don't see any reason why it couldn't be done
3 that way, because you're going to give your people at the
4 OSHA plant the fall protection just like you will the
5 miners, so there's certain types of training that I would
6 certainly see there should be some crossover, so I can't
7 give you an answer to the question you're raising, because
8 it is somewhat of a tight issue, but we will try to figure
9 that out, because I think it's important. It's obvious to
10 me that you want to train these people properly, but you
11 don't want to be put in a position where you're do an awful
12 lot of training that's not -- that you don't feel is
13 necessary and won't have any end result except the fact that
14 you had to train people.

15 MR. POTTS: Well, that and I don't want to be in a
16 position if an inspector showed up and said who do you have
17 working here and who is trained not be able to make the two
18 lists match, and I just -- I've been through haz training
19 courses, first aid training courses, and all these courses
20 take a certain amount of time, and personally, as a person
21 in these training courses, you spend about 80 percent of it
22 sleeping because you just sit there and drug on and drug on
23 and drug on. Forty-hour haz training course could be done
24 in about 15 hours if it was just done, and I've been in that
25 position, and it's just -- I have nothing against training

1 people, but I feel that they have to be on site part of the
2 time at least to see what the hazards are. Some sites -- a
3 high wall to a lot of sites may not have any meaning at all
4 to some people. To where on other sites a high wall is a
5 very, very big part of their job they have to worry about.

6 MR. BRELAND: Just one other follow up on the
7 loader operator. Again, because you move so much, that nine
8 or ten times a year, which is pretty often, would it be just
9 about every time that you move that there would be some
10 occasion you need to crossover somebody for fill in, for
11 help?

12 MR. POTTS: Virtually every time I move, I will
13 probably crossover on each plant three people if I were to
14 take an average, yes.

15 MR. BRELAND: Like what kind of three besides a
16 loader operator?

17 MR. POTTS: For instance, one source you may use
18 one D-9 end dozer. Another source you may use two. When I
19 bring in the second one, whoever is running it on the job,
20 they'll come with their dozer. Well, in this instance, if
21 they don't have the MSHA training, obviously their dozer
22 can't go with them or they can't come with it.

23 MR. BRELAND: It's almost always a mobile
24 equipment operator of some sort?

25 MR. POTTS: Mobile equipment operator. Normally

1 speaking, my plant operator, my plant personnel are with the
2 plant, and they would through safety meetings -- and I would
3 hope we could grandfather in some of these people a little
4 bit. I don't know how you take a guy that's been through 20
5 years of running a rock crusher and then all of a sudden say
6 you need eight hours training to -- I think they need -- you
7 know, the eight hours training doesn't hurt anybody, but
8 they've heard most of it before.

9 MR. BURNS: I think the training plan that has
10 been put together by the industry group that was mentioned
11 before, that does talk about grandfathering, you know,
12 current mine employees, and then they require, you know, the
13 eight hours annual refresher within a certain period of
14 time. I'm still trying to figure out what to do about this
15 crossover, and you're always -- because of the turnover
16 issue, you're always going to have a certain number of
17 people that don't have that 24 hours of training, and what
18 you're proposing is that they get some sort of new amount of
19 training up-front, they get supervised work, and then the
20 rest is filled in through the safety talks.

21 MR. POTTS: That would be my proposal.

22 MR. BURNS: And certainly the task training would
23 fill in for any new tasks or new hazards they'd be exposed
24 to?

25 MR. POTTS: Yes.

1 MR. BURNS: Okay.

2 MR. POTTS: I think that's very important on any
3 mine site, especially a new one. You have new hazards and
4 new tasks on a lot of sites, and I mean, if you go from an
5 alluvial gravel pit, for instance, to a quarry source,
6 you're put in a job that you haven't run, a jaw operator,
7 there's a lot of task training involved with that that a
8 person may not have been around before, but there's --
9 that's my biggest concern is moving from site to site on a
10 portable plant is keeping people there trained without
11 having to have a full-time trainer somewhere to train them.
12 We're a small company. I mean, that's hard to justify a
13 full-time trainer on staff.

14 MR. BRELAND: Thank you, Mr. Potts.

15 MR. BURNS: You know, like I said, we will try to
16 address this, and the proposed rule will probably be put out
17 in the spring, and I hope -- you know, we'll try to make
18 sure we send you a copy. Did your company receive a letter
19 concerning these public meetings?

20 MR. POTTS: Yes, I did. That's why I'm here.
21 Yes, I get one or two of them. We have two portable plants.

22 MR. BURNS: Okay. Because I'm curious about that,
23 because you know how mailing lists are. They're constant
24 work to keep them updated, but I would be interested in your
25 input on this issue once the proposal comes out or if you

1 have any thoughts on it before the proposal comes out, if
2 you would like to either submit them directly to us or
3 through an association also.

4 MR. POTTS: Well, and then real quickly on the
5 same token -- I realize MSHA's budget restrictions. You're
6 always short handed like all of us, and I know in our field
7 office, for instance, they didn't even know anything about
8 the meeting. I was asking some guys, some of our field
9 office people if they were going and don't even know nothing
10 about it, but for training, I hear some of these guys
11 talking about training in conjunction with their MSHA
12 people. As far as I know, that's never been offered in our
13 area, and I've talked to them about it on more than one
14 occasion.

15 We've had, as mandated, I think, the last two
16 years due to fatalities, a short 15-minute talk by an
17 inspector at different times, twice in the last two years,
18 show up just one day and give a short lunch break talk about
19 the fatalities and things, but as far as any formal training
20 given by MSHA, we've not had any. I would be interested in
21 that.

22 MR. BURNS: Is there a period in the year when
23 that would be most effective from the standpoint that people
24 would be more available?

25 MR. POTTS: January, February, just like the rest

1 of the world here, I imagine.

2 MR. BRELAND: I was just going to add. You said
3 you're from Idaho, and a little bit of background on what my
4 role will be as western operations manager, we are in the
5 process of -- we've done a lot of selections, and we are
6 going to place a training specialist in Boise, in the Boise
7 field office. I don't know if that's close to where you're
8 at.

9 MR. POTTS: Yes.

10 MR. BRELAND: That person will be assigned to try
11 to assist as much -- we want to get to mine sites as much as
12 we can. We're going to put one in Bellevue, Washington, as
13 well, one in Arizona, one in Southern California. So we are
14 trying to spread these people out some to help provide some
15 assistance and on-site assistance and not just the walk-and-
16 talk type stuff. We'll be not in an enforcement mode but in
17 a training and safety program assistance kind of mode.

18 MR. POTTS: Well, I think as far as fatalities and
19 the work in the mine, I feel that training and the -- good
20 training would save more fatalities than enforcement ever
21 does, because I know me as a -- myself as a mine operator, I
22 try to practice good safety practices, and you get an
23 enforcer out there that can be very, very petty and give you
24 two citations -- just as I heard earlier, a light bulb 40
25 feet in the air that's unguarded or something. You know, I

1 would lot rather see somebody coming in willing to work with
2 us and say, here's your problems, site-specific problems,
3 and, you know, obviously you've not addressed them at all,
4 have some enforcement, but if you've tried to address all
5 your problems, maybe educate us a little more on what needs
6 to be addressed. We can all read the rule book, and we try
7 to cover all the rules, but there's a lot of them there.
8 For myself anyway, that's the way I feel.

9 MR. BURNS: Any other?

10 MS. ALEJANDRO: Yes. Are there any other
11 questions? Thank you very much, Mr. Potts.

12 The next speakers that we have signed up -- I
13 believe they're coming up together -- Pete -- and I
14 apologize for the pronunciation. Pete Zagar and Dave
15 Griffin from Eugene Sand & Gravel.

16 (Pause.)

17 If you could, spell your name for the court
18 reporter.

19 PETE ZAGAR

20 MR. ZAGAR: My name is Pete Zagar, Z-a-g-a-r, and
21 this is David Griffin, spelled G-r-i-f-f-i-n, and I'm the
22 production superintendent at Eugene Sand & Gravel in Eugene,
23 Oregon, and David is our safety director, and we'd like to
24 kind of present what we're doing right now, and I'm also the
25 environmental chair for OCAPA.

1 So what I'd like to describe briefly -- and then
2 I'll turn it over to Dave -- is what we're doing, and I'd
3 like to say a couple of things. One of the things that I've
4 recognized out there in Oregon -- and I can only speak for
5 Oregon, but we have several -- more than several companies
6 that already have very good training modules in place that
7 follow 48, and we believe ours is one of them. One of the
8 things that I'm going to propose that I would like to see
9 done -- and I don't know if it's feasible or not -- is for
10 the larger companies to make these boilerplate plans, if you
11 will, available to the smaller operators. We're perfectly
12 willing to loan a copy of ours out to anybody who wants to
13 review it as a boilerplate, assuming that what we have is
14 acceptable MSHA.

15 Actually, what we have here is acceptable to MSHA.
16 Back in 1996 we submitted a copy of our plan to the Albany
17 field office, and in turn, that copy was submitted to
18 Vacaville and although at that time they don't have the
19 funding to officially approve it, they did review it, and
20 they gave it their blessing. So it has been endorsed, and
21 actually, the gentleman who endorsed that was Leo Hayden
22 down there in Vacaville. So he has reviewed our plan, and
23 he says our components that we've listed complies with part
24 48. So I just wanted to make that available to anybody in
25 here who would like to review that through OCAPA and through

1 Eugene Sand & Gravel.

2 Additionally, a couple of things that we have -- a
3 couple of resources that we have used is OSHA, Oregon OSHA
4 specifically, and Oregon OSHA has a real wonderful
5 consultation division where they will come in free of charge
6 if you have a specific issue.

7 In our plant we have kind of an overlapping
8 OSHA/MSHA jurisdiction. We have an asphalt plant that is
9 adjacent to our crushing operation, and actually, there's
10 some conveyors that, kind of depending upon who wants to
11 inspect them, could be inspected by both, and OSHA has come
12 in on several occasions and done free consultive services
13 for confined space issues, for respiratory issues. So
14 there's a little overlap there that may be something -- and
15 we already talked about that earlier about maybe looking at
16 the OSHA training that some people do and maybe seeing if
17 there's something that can be done there.

18 The other thing that we do that's unique, we do a
19 lot of team building with our crew. I have about 26
20 individuals that would fall under MSHA that work for us, and
21 one of the things we do is whenever we have a safety issue
22 -- and I'll give a specific example. We had a double
23 overtime for a couple years trying to get these guys to
24 understand what proper lockout/tagout procedures were, and
25 our philosophy is that we go to them, and we present the

1 problem, and we let them brainstorm on what would be the
2 most effective way in-house to comply and make it easier for
3 them to understand how to comply with the lockout/tagout or
4 fall protection or whatever it might be. We get our
5 employees involved in the decision making process, and it's
6 proved to be invaluable, because they really become part of
7 the decision making process, and they feel by doing that
8 that they've endorsed the solution, and they become more
9 infinitely aware of what the particular standard is
10 addressing. In this case, in terms of lockout/tagout, they
11 finally came up with what we feel is a pretty darn good
12 solution.

13 So those are just some of the issues that I'd like
14 to -- some of the things I'd like to bring to your
15 attention, and I'll turn it over to Dave.

16 DAVID GRIFFIN

17 MR. GRIFFIN: Thank you. I guess I look at this
18 issue more from a perspective of someone that's going to
19 have to put the plan together to satisfy your requirements.

20 A couple of questions I have. You indicated that
21 this was not going to be a reworked part 48 format. Can you
22 give me some idea of what you are going to do? Are you
23 going to use some of the components of part 48 or -- because
24 part 48 was quite clear in its approach to surface mining,
25 which is what sand and gravel falls under, and what is the

1 proposal going to look at?

2 MS. ALEJANDRO: I think actually it's a little bit
3 too early for us to be real specific about what's going to
4 be in the proposal. I mean, obviously we've got to hit the
5 minimum requirements that are in section 115 of the Act. I
6 mean, that's the floor -- the level which we cannot fall.
7 What gets included on top of that, I mean whether we include
8 some, you know, concepts that are similar to what's in part
9 48, I mean, I really do think that it's too early to tell,
10 and that's really why we're here is to get some sense from
11 you all -- I mean, if there's things in part 48 that you
12 like, I mean, that are -- you know, you think kind of
13 clarify things and you think that you, you know, would like
14 to recommend that we incorporate them in some fashion, then,
15 you know, if you're not prepared to do that today but you've
16 got some areas that you'd like to touch on in writing, I
17 mean, I encourage you to submit stuff to us before, you
18 know, February 1st.

19 Obviously, I mean, Congress has indicated that
20 we're supposed to use as a basis for any proposal the final
21 draft proposed rule that we get from the Coalition for
22 Effective Miner Training, and some people who have been up
23 here have already, you know, referred to earlier drafts of
24 that. So if you don't have a copy of the latest draft, we
25 can probably get you a copy, so you can see what the

1 association is recommending. I mean, it goes beyond what's
2 in the Act, but, you know -- well, I don't know if there's
3 anything more I can say about it, but --

4 MR. GRIFFIN: So there is a draft in existence
5 now?

6 MS. ALEJANDRO: Right, but it's not the final
7 draft. I mean, we are being provided with working copies,
8 and, again, you know, to make sure that no one is confused,
9 I mean, that's not MSHA's draft. We're being provided
10 copies, you know, as they work through it, and, you know,
11 it's changed somewhat, and I anticipate that what we get as
12 the final draft on or before February 1st is going to be
13 somewhat different from the draft, the latest draft we have
14 now, but at least that will give you some idea of what, you
15 know, the Coalition is thinking about, and then may provide
16 some basis for additional comments that you may want to make
17 in writing for us to consider. So if you want, I mean,
18 anyone who -- I mean, you know, come up and we can get you
19 copies of the latest Coalition draft.

20 MR. GRIFFIN: Yes, I'd like to get a copy of that.

21 MS. ALEJANDRO: Yes. So just, you know, come up
22 and let us know.

23 MR. GRIFFIN: A few more comments that I'd like to
24 make regarding -- and I have to use the part 48 as a basis,
25 because that's basically what we're operating under now.

1 MS. ALEJANDRO: Certainly.

2 MR. GRIFFIN: One provision that I really like and
3 I would like to see included in the final standard, there's
4 a provision in there to withdraw a miner from his duties and
5 retrain him, and basically, I think that's a really good
6 thing. It's kind of a quality assurance, let's say, that if
7 your training appears to be inadequate or the miner is not
8 receptive, it gives you an avenue to retrain that miner.

9 MS. ALEJANDRO: That actually -- I'm not exactly
10 sure what provision you're addressing, but that may also be
11 based on section 104(g)(1) of the Act, which provides that
12 inadequately trained miners are to be withdrawn. So I mean,
13 that would be something that would be required to include as
14 well, I would imagine.

15 MR. GRIFFIN: Another issue that would affect us,
16 as well as any company that has multiple sites or, for
17 instance, a portable operation where they've got an office
18 at one locality and they may be anywhere in the state, is
19 the records. We have two -- actually four locations, and
20 from time to time an inspector may visit one of those
21 locations where our records are not routinely kept. I think
22 there should be a provision made for that. In other words,
23 does the records for 12 men at a remote site need to be kept
24 on that site, and I would propose that as long as it was in
25 the office where it was made available to the inspector that

1 should be adequate.

2 MS. ALEJANDRO: Yes. We've gotten comments on
3 that, too. There's a lot of people who have recommended,
4 you know, some kind of centralization recognizing the
5 increasing, you know, computerization and centralization of
6 records in business operations. One thing that some people
7 recommended was to, you know, provide some basis for
8 effective enforcement is that a reference -- when an
9 inspector comes in and requests them, if they're not at the
10 mine site, that they may be made available within some
11 period of time.

12 MR. GRIFFIN: Yes.

13 MS. ALEJANDRO: And I don't know, you know, what
14 that might be or, you know, how we're going to handle that,
15 but we have gotten comments on that particular issue.

16 MR. GRIFFIN: I believe one of the other speakers
17 spoke to this as well. We have areas of our operation that
18 are regulated by OSHA and areas by MSHA, and again, the idea
19 of training begins to be a problem. For instance, in our
20 operation our haul truck operators are not always the same
21 people. We may from time to time draw out of our
22 transportation department, which is under OSHA jurisdiction.

23 MS. ALEJANDRO: Yes, yes.

24 MR. GRIFFIN: My thoughts on this would be that
25 rather than put these people through the entire training,

1 train them only for the specific tasks that they would be
2 required to perform unless, of course, they would be
3 actually moved into the department as a permanent miner.

4 MS. ALEJANDRO: Well, I mean, do those people come
5 in to, you know, mine sites sort of as pinch hitters, I mean
6 to fill in and substitute, or is that a regular part of
7 their job?

8 MR. GRIFFIN: Not so much as a substitute but as a
9 very limited function. In other words, a haul truck driver
10 --

11 MS. ALEJANDRO: Would come and load and then move
12 on?

13 MR. GRIFFIN: Yes. That's all he would do would
14 be to drive the truck, and if the training were specific to
15 that task rather than the overall miner training curriculum,
16 why to me that would make more sense.

17 MS. ALEJANDRO: Yes, and that's another issue
18 we've gotten comments on is, you know, who is a new miner,
19 who is an experienced miner, I mean different categories of
20 employees with different functions and what type of training
21 is appropriate depending on what they actually do, so that's
22 something that we'll have to take a look at.

23 MR. GRIFFIN: This also was addressed, and I'd
24 like to clarify it a little bit. It doesn't apply so much
25 to our operation, but in a sense, I think this would be a

1 big help to smaller operators, and I really am sensitive to
2 their needs because that was kind of my background was a
3 small portable operation. If they were to keep an accurate
4 text and attendance record of their safety meetings, could
5 this be accepted as certificate of training?

6 MS. ALEJANDRO: And that, again, is something that
7 we've got a lot of comments on.

8 MR. GRIFFIN: Yes.

9 MS. ALEJANDRO: We've had a lot of people come in
10 and say that they think, you know, short periods of training
11 over the course of a year is more effective than giving it
12 all at once, and, you know, a lot of companies have got
13 these regular safety talks, and so the question is, you
14 know, should we accept that as satisfying the refresher
15 training or, I guess, as the 24 hours of initial training,
16 and the one thing that we keep in mind on that is that the
17 Act does require that records be kept of the training that's
18 given, and obviously if you're giving training in shorter
19 increments, then the record keeping part is going to
20 increase, but I mean, I guess that could be a decision that
21 an operator might choose to make, and that is something that
22 we're also giving serious consideration to is how to handle
23 that.

24 MR. GRIFFIN: Well, and I think also that -- this
25 also was addressed. The scope of the operation, in other

1 words, do you have some sort of plan for determining the
2 extent of training depending on the size of the operation?

3 MS. ALEJANDRO: You mean as far as the amount?

4 MR. GRIFFIN: The amount or -- in other words,
5 like, for instance, a three or four man operation, obviously
6 their training needs wouldn't be nearly as extensive as say
7 a large portable or, pardon me, a large stationary plant
8 with say 100 employees.

9 MS. ALEJANDRO: And I can't say that I necessarily
10 disagree with that. However, you know, I was talking about
11 the floor that the Act gives us as far as requirements, and
12 we cannot -- I mean, we have got to require in our rule a
13 minimum of eight hours of annual refresher training --

14 MR. GRIFFIN: Yes.

15 MS. ALEJANDRO: -- and a minimum of 24 hours of
16 initial new miner training. So I mean, even if we were to
17 conclude that it might be appropriate to handle it
18 differently, I mean, that's the minimum that we're dealing
19 with.

20 MR. GRIFFIN: As long as it meets the requirements
21 of the Act.

22 MS. ALEJANDRO: Right, right.

23 MR. GRIFFIN: Okay.

24 MR. BURNS: And we really -- you know, as Kathy
25 stated, we do recognize what you're saying, and what we hope

1 to do is address that through, you know, more flexibility to
2 address the various size operations and their needs and the
3 needs of -- I mean, it's the size of the operation and the
4 new miners you get. I mean, all new miners aren't the same,
5 you know. You might have to train me more than you'd have
6 to train Rod, you know. Everybody is different, so I think
7 -- we try -- we want to try to address that through
8 flexibility, but along the same lines of what Kathy stated,
9 the Act requires certain things and that's our mandate. We
10 have to comply with the Act.

11 MR. GRIFFIN: Okay. One other question I've got
12 is -- and this has to do with the trainer certification.
13 When an operator submits a training plan, if they furnish
14 evidence in the form of a resume or a narrative that a
15 foreman or an individual either by education or experience
16 is qualified to be as a trainer, to be a qualified trainer,
17 is that going to -- is that going to be sufficient to have
18 them certified?

19 MS. ALEJANDRO: Well, as I think I said earlier,
20 the Act doesn't set any minimum requirements for people who
21 provide training.

22 MR. GRIFFIN: Okay.

23 MS. ALEJANDRO: I mean, it's wide open, and I
24 mean, that's going to be a big issue here is what kind of
25 qualifications should we impose for people who provide

1 training, and a lot of people have come in and said, you
2 know, the people with the experience at the mine site are
3 going to give you the best training. Other people are kind
4 of in the middle where, you know, you got to use the people
5 with the experience, but they also need some kind of
6 training in how to provide training, and then on the other
7 hand, you know, there's people who advocate, you know,
8 getting some kind of a formal approval in order to be able
9 to do that. So I mean, if you've got specific
10 recommendations for how we ought to handle that, you know --

11 MR. GRIFFIN: Okay.

12 MS. ALEJANDRO: -- if you're not prepared to do
13 that today, I mean, you could give us something in writing
14 as far as how you think it would be appropriate and how we
15 should handle that.

16 MR. GRIFFIN: Okay. Also, when a plan is
17 submitted for approval, is it going to be looked at on its
18 own merits, or is it -- or is there going to be more or less
19 just certain standards that have to be present in the plan
20 for approval? In other words, if an individual operator can
21 craft a plan that fits their operation and still meets,
22 let's say, the requirements of the Act, is that going to be
23 the basis on which you would approve?

24 MS. ALEJANDRO: I think it's probably a little bit
25 too early to talk specifically about how MSHA is going to go

1 about approving, and that, again, is an issue. I mean, the
2 Act requires that the training plan be approved by the
3 Secretary of Labor, which means MSHA, you know, how should
4 that process work. I mean, you all -- would you be
5 comfortable with, you know, a process by which plans get
6 sent into a central location or to the district and get
7 evaluated, you know, or is it, you know, having the mine
8 inspector make that kind of determination when he shows up
9 to do his inspection? I mean, there's a variety of ways
10 that we could go about handling that.

11 Now, as far as, you know, how the plans are going
12 to be evaluated is going to depend to a large extent on what
13 we decide to put into the rule, I mean, as far as, you know,
14 a program should meet these minimum requirements, it's got
15 to have boom, boom, boom. Anyone who is going around to
16 approve it is probably going to be looking at, you know,
17 whatever the rule says that a plan has got to have and, you
18 know, what's included in there. I mean, there are some
19 minimum requirements in the Act, but I think there's a lot
20 of flexibility as far as how we approach that, and, again,
21 you know, if you've got specific recommendations, we'd love
22 to hear from you.

23 MR. GRIFFIN: Yes, and I think what we intend to
24 do is take the time that we have left to us before the
25 comment period expires, and we do want to, you know, put

1 some thought into --

2 MS. ALEJANDRO: Sure.

3 MR. GRIFFIN: -- our comments.

4 MS. ALEJANDRO: We would appreciate it, and I'll
5 give you all a short summary of what the process is beyond
6 here, and you're going to have a couple different bites of
7 the apple, and then when we come out with the proposed rule,
8 there's a comment period after that where you'll be able --
9 I mean, it won't be quite so wide open, obviously. I mean,
10 we're going to have a proposed rule for you to look at
11 specifically, and, you know, you'll have the opportunity to
12 send in comments in writing, and also there will be several
13 public hearings at different locations.

14 MR. GRIFFIN: One other thing -- I keep thinking
15 of one other thing, you know.

16 MS. ALEJANDRO: Okay. No, that's fine. That's
17 what it's all about.

18 MR. GRIFFIN: How likely -- well, let me ask it
19 this way. The consultative problem bothers me. Why don't
20 you have consultative services available?

21 MS. ALEJANDRO: You mean right now?

22 MR. GRIFFIN: Yes.

23 MS. ALEJANDRO: I can't really answer that. You
24 mean as far as assisting mine operators in developing
25 training?

1 MR. GRIFFIN: Yes.

2 MS. ALEJANDRO: I'm really not qualified to answer
3 that. I don't know whether Rod has some opinion.

4 MR. BRELAND: Well, again, our reorganization, the
5 educational field service group is going to try to the
6 extent possible provide consultation services, recognizing
7 we have about 50 specialists scattered throughout the United
8 States, a good part of them in the eastern part right now.
9 As I was talking about earlier, we're going to -- 11 of the
10 recent 12 vacancies for specialists have been located in our
11 western area, if you will, Midwest, mostly in the far west,
12 so we expect to be able to have people like Mr. Hayden that
13 you dealt with before scattered out more, and we want them
14 at mine sites as much as possible, but given that there's
15 some 10,000 mine operations in the metal and nonmetal that
16 are presently in these exempt categories, it's obvious that
17 they won't be able to make it to all sites. I think we are
18 headed that direction to the limit that we'll have
19 resources.

20 MR. GRIFFIN: Thanks.

21 MR. BURNS: And when you talk about the
22 consultative services, you're talking about similar to what
23 OSHA does?

24 MR. GRIFFIN: Yes.

25 MR. ZAGAR: That's correct.

1 MR. BURNS: Yes. I'm somewhat familiar with that,
2 and I mean, that is set up different than anything MSHA has,
3 because they're really not -- it's an OSHA program, but
4 they're not really working for OSHA. They come in, and it's
5 confidential type evaluation, and as long as they don't see
6 some imminent danger that the operator is not going to
7 correct, that's the only time they break that confidential
8 relationship. We don't have anything similar to that. I
9 guess the only thing I could see maybe something, you know,
10 help through the state grants with that sort of -- because
11 that's a different expertise you're talking about. That's
12 not just training. You're talking about some technical
13 expertise and help. Is that correct?

14 MR. GRIFFIN: That's true, but I guess what
15 prompts my concern is that, you know, this is bringing this
16 industry in under the training requirements is a pretty big
17 step for some of these people, and it's not realistic to
18 expect them to do that by themselves, and that's why I think
19 that somehow -- and I know that this is all tied to funding.
20 Somehow -- you know, Oregon OSHA can afford this. That
21 money came from someplace, and I just feel like that MSHA
22 needs to put some money into that service. After all, we're
23 talking about safety here.

24 MR. BRELAND: Presently we're funded in about \$6
25 million of the \$10 million that's supposed to be available

1 for state grants, and that is an area that Mr. McIntyre
2 (phonetic) is looking at and trying to see if we can get
3 some congressional support for additional funding there.
4 That would help.

5 We're going to try to encourage state grants, as
6 Kevin pointed out, who are already active to become more
7 active, and those that haven't been as active to try to
8 steer a lot of their activities towards again assisting in
9 their more regionalized areas to provide some help.

10 MR. ZAGAR: Let me say one thing about that. In
11 fairness to our local field office, we have actually had
12 them come out several times on their own to consult about a
13 specific issue at our plant site, so they do -- they will do
14 that if they have the time, but usually they don't have the
15 time, but they have made themselves available on several
16 occasions, and I think it depends on the field office and
17 who is managing the field office and that situation. This
18 particular field office here in Albany, Oregon, is pretty
19 good about that actually in my experience with them.

20 One thing I'd like to talk about a little bit real
21 briefly and kind of just express it, I'm comfortable or more
22 comfortable with the required components of part 48
23 specifically. In addition, some of the other issues that we
24 have ongoing training being conducted is fall protection.
25 We have a very -- a lot of confined space issues that both

1 OSHA and MSHA would be concerned about. In addition to
2 that, we do an oxygen and acetylene training module, which
3 is very valuable, because that is a very big area of concern
4 for us, especially with new miners who may not have that
5 welding experience or oxyacetylene experience. So those are
6 a couple of other areas that I think you might want to take
7 a look at, including in the standard or the new standard,
8 because there are a lot of accidents in those areas if you
9 read the statistics.

10 But as far as the rest of the requirements -- and
11 I'll just go down -- I've got our plan right here, and I'll
12 just go down for everybody's benefit what we include in our
13 plan that was approved or at least accepted unconditionally.
14 They couldn't accept it, but they said it would meet the
15 standard.

16 We've broken the 24 hours down into kind of hourly
17 or hour and a half components that an inexperienced miner
18 would have to be trained in, and it kind of goes like this:
19 statutory rights of miner, that would be an hour and a half
20 presentation, and all of these would be either somewhat
21 formal lecture and videos and that type of thing. Self
22 rescue and respiratory devices, hour and a half;
23 transportation controls and communication systems, an hour
24 and a half; introduction to the work environment, which is a
25 walk around, taken by the hand, show them the plant site,

1 show them the dos and don'ts, maybe show them a laborer
2 shoveling out a tail pulley when it's locked out, not when
3 it's running, those kinds of things. Escape, evacuation
4 plans, fire fighting, fire warning, just site specific for
5 the plant, ground control, an hour and a half; health
6 module, just a basic PPE, hour and a half; hazard
7 recognition, an hour and a half; electrical hazards, an hour
8 and a half, which also includes lockout/tagout; first aid,
9 which is eight hours -- most of your standard courses are
10 eight hours -- and then health and safety aspects of
11 assigned tasks that they're going to be assigned to. You go
12 over what those health and safety issues are based on that
13 task or those tasks that that new employee is going to be
14 doing. That's how we kind of have ours set up and that's
15 what was tentatively approved, so I just wanted to share
16 that for the benefit of everybody in here on kind of how you
17 could compile those 24 hours and conduct the training.

18 MS. ALEJANDRO: Actually, I have a question on the
19 issue of first aid, which has been raised before. I mean,
20 as the situation with first aid, you say that it's going to
21 be a minimum of eight hours. Do you bring someone in from
22 the outside to give that and that's the shortest course
23 that's offered on first aid?

24 MR. ZAGAR: Generally, yes. We have -- we do
25 American Red Cross, and they come in, and it's usually an

1 eight-hour session, right.

2 MS. ALEJANDRO: I see, okay. If you could, Mr.
3 Zagar, could you just give us a short description of your
4 operation, the size and locations and just for the record so
5 we know where you're coming from?

6 MR. ZAGAR: We have four operations. We have two
7 in Eugene. We have a base rock operation, and it's about a
8 600,000 ton per year operation, and then we have our main
9 plant, which is mining concrete and asphalt and aggregates,
10 and that's about pretty close to the same, about 600,000
11 tons per year.

12 MS. ALEJANDRO: Yes.

13 MR. ZAGAR: And so between the two there, we'll a
14 little over a million tons per year. We have 24 employees
15 in our department, including two foremen, and we have four
16 haulage vehicles, two at each pit, and our extraction is
17 through truck excavating, and pretty straightforward. One
18 of our pits -- probably the most unique thing about our pits
19 is we're right along the Willamette River, so we have to
20 pump a lot of water, and we mine dry, but we do -- the other
21 issue that we've -- based on last year's concerns about
22 haulage accidents, we really do a lot of training on our
23 haul truck drivers and task training with them, and I think
24 we do a pretty good job of that. We take that very
25 seriously, and they do, too, and so we review that on a

1 quarterly basis, and we're always looking to make sure the
2 roads are bermed and the roads -- we have a grader on the
3 roads at all times when they're hauling to maintain the --
4 make sure the roads are graded properly and that kind of
5 thing.

6 Our other operation is at Corvallis, Oregon. It's
7 about a 500,000 ton per year operation. It's also cab truck
8 haulage with an excavator, and we have 14 employees that are
9 under MSHA there, and then we have another operation down in
10 Southern California (sic) by Azalea area, and that is also
11 about -- and that's probably about a 700,000 ton per year
12 operation. We have, I believe, 16 employees at that
13 operation, and that's also a base rock and finish concrete
14 and asphalt and aggregate producing operation.

15 MS. ALEJANDRO: Thank you. Anymore questions?

16 MR. BRELAND: Just a couple.

17 MS. ALEJANDRO: Okay.

18 MR. BRELAND: When you talked about the
19 documentation, you know, an accurate text of what the
20 subject was and as one proposal, one of the provisions is a
21 miner -- and which a lot of them do in the industry, they
22 move onto other job sites and what have you, but they're
23 able to take a record with them. Had you considered how you
24 would provide that for them?

25 MR. GRIFFIN: We use your standard -- I think it's

1 5300.

2 MR. BRELAND: Form 5023?

3 MR. GRIFFIN: Yes.

4 MR. BRELAND: Well, you were talking about, I
5 thought, though, in a proposal of just keeping a text and a
6 sign-in sheet or a list of who attended. So you would do a
7 summary of that and give that to somebody if they were going
8 --

9 MR. GRIFFIN: Actually, I hadn't thought of that,
10 but --

11 MR. BRELAND: You might consider that as one of
12 the things that --

13 MR. GRIFFIN: Yes.

14 MR. BRELAND: It would have to be addressed.

15 MR. GRIFFIN: Yes.

16 MR. BRELAND: Another thing, just to clarify in
17 the plan, Mr. Zagar, you talked about your generic or your
18 plan that was submitted, but, Mr. Griffin, you said
19 something about them being site specific, that training
20 plans should be more site specific. Did I misunderstand
21 what you were --

22 MR. GRIFFIN: Well, I think that's the danger of a
23 boilerplate plan and just filling in the blanks is it's
24 pretty generic, and I think that each side is going to have
25 characteristics that need to be addressed in the training

1 plan.

2 MR. BRELAND: Well, so are you suggesting maybe
3 part of it should be boilerplate and then others -- there
4 should be some addendum to that that's more site specific?

5 MR. GRIFFIN: Yes. I think as you indicated, it
6 has to meet the minimum standards of the Act, but I think
7 looking at an overall operation is what are your areas of
8 concern and are you addressing them is basically the
9 question that a training plan needs to answer.

10 MR. BRELAND: Okay.

11 MR. GRIFFIN: If you've demonstrated in your plan,
12 in the narrative of your plan, that you've addressed any
13 characteristics that may be peculiar to your operation.

14 MR. BRELAND: Just as a -- you know, you might
15 consider that when you're making comments how you would want
16 -- propose to address that.

17 MR. GRIFFIN: Yes, and I think that is one of our
18 concerns.

19 MR. BRELAND: And then the one other thing on the
20 certification of your instructor, I'm not sure I understood
21 what you meant or what you were proposing out how you would
22 select --

23 MR. GRIFFIN: Well, what my idea is to furnish a
24 resume, and I think that practical experience needs to count
25 for a large portion of that. We've got people that actually

1 train -- do task training that -- you know, they've got a
2 lot of years in this business, and that to me qualifies them
3 as a trainer, and I guess my concern would be that you look
4 at that experience level as adequate qualification to train.

5 MR. BRELAND: I would think that that's probably,
6 you know, going to be well received comments, but the one
7 concern that others would have is what if you have a well
8 qualified on paper person who is not demonstrating that
9 they're either instructing what they should or they, in
10 fact, aren't good instructors. Is there -- you know, there
11 might be some concern about what would be the way to deal
12 with that, remedial training, go through an instructor
13 course itself. When you're considering your comments, you
14 might think of that as well, and that would be an issue how
15 do you address the proposal if somebody has got all this
16 paperwork or background but, in fact, are not good.

17 MR. GRIFFIN: Right.

18 MR. BRELAND: Okay.

19 MR. GRIFFIN: Yes, okay.

20 MR. ZAGAR: Regarding the comment you made a
21 minute ago about making the training specific to the site, I
22 use the example of our lockout/tagout and how we solved that
23 issue with our employees. We had some unique situations
24 there that we had to address, and they were pretty much
25 based on some areas that were remote or they were outside of

1 the motor control center, and they had the ability when they
2 working in the proximity of this equipment to lock it out.
3 So we basically put lockout stations -- and actually what we
4 ultimately did was we welded the locks to the breaker so
5 that the locks are always there, and then we have a system
6 where they actually take the key from that lock and put it
7 in the lockout box and put their personal lock on the
8 outside of the lockout box, and now it's pretty failsafe. I
9 mean, they all seem to -- and it was their idea, because a
10 lot of times guys before, they'd forget to bring their lock
11 with them, and we have to work on something, and there was a
12 lot of wasted time. We stress in our -- everybody knows in
13 this business that time is money, and a big part of that is
14 being efficient with your safety protocols and your safety
15 procedures, and if you can do that, it goes hand in hand
16 with the productivity of your operation, and I can't stress
17 that enough.

18 MS. ALEJANDRO: Do you have anymore?

19 MR. BURNS: No. I mean, I did notice in your
20 training plan you don't address explosives, so I'm assuming
21 you don't use explosives at your mine, and that's why --

22 MR. ZAGAR: Right.

23 MR. BURNS: And then you -- it seems to me that
24 you add to that with the confined space training and the
25 oxygen and acetylene training and welding, and I envision --

1 we do want to -- we do have to address the minimum
2 requirements, but I also recognize -- and I believe in my
3 own opinion that it's important that if you have someone
4 that's doing maintenance work -- and that's an area where we
5 have a lot of concerns, and I think everybody in the
6 industry has a lot of concerns. You need to be able to
7 train them on the issues that affect them. I mean, you
8 could have -- I mean, the most important training could be
9 the acetylene and oxygen training and confined spaces. I
10 mean, that's -- if they're in there doing some welding in a
11 confined area, that's a tough job, and they need more help
12 in that area than they do, you know, necessarily in, you
13 know, working on a high wall or something like that.

14 So we do want to form a rule to allow that person
15 to get more of that type training than the person running
16 the crusher, because it's not going to do him as much good.

17 MS. ALEJANDRO: Anything else?

18 MR. BURNS: No.

19 MS. ALEJANDRO: I believe Ros has got a couple
20 questions.

21 MS. FONTAINE: Yes. Mr. Zagar, the agency is
22 responsible for developing a regulatory flexibility analysis
23 to determine the cost of benefits for proposed rules. Based
24 on your experience, could you give me an estimate of what it
25 costs your company to train your employees on an annual

1 basis?

2 MR. ZAGAR: Yes. Right now I would say, including
3 Dave's salary here and all of the components that we've put
4 together -- of course, a lot of the stuff we have in place
5 -- and it's taken us a couple years to accumulate it. So I
6 think from this point on, we're going to be adding new
7 videos and new training -- you know, just new information.
8 You constantly want to try to refresh, but I'd say probably
9 right now for us it's probably in the neighborhood -- just
10 for our department alone, probably in the neighborhood of
11 \$50,000 a year if not a little bit more than that. It could
12 be upwards to \$75,000.

13 Dave is also responsible -- because we have OSHA
14 as well for our mixer fleet and our dump fleet and whatnot,
15 he's also responsible to take care of that training, so it's
16 kind of a mixed bag. If you took it overall, the whole
17 thing is well over \$100,000 a year.

18 MS. FONTAINE: Okay, thank you.

19 MS. ALEJANDRO: Thank you very much.

20 The next speaker on our list is Ed Sinner -- and,
21 again, I apologize if I'm mispronouncing this -- from Oregon
22 Mine Safety and Health Training Program.

23 ED SINNER

24 MR. SINNER: My name is Ed Sinner, and that's E-d
25 S-i-n-n-e-r, just like it sounds.

1 The first thing I'm going to do is plug my
2 program, the Oregon Mine Safety and Health Training Program.
3 I am funded through MSHA, Department of Labor as a resource
4 for mine operators to comply with part 48 training
5 requirements, and a lot of sand and gravel people don't know
6 about me. I hit mainly -- well, the people that I do hit
7 are the ones that have to have the training.

8 Up to now everything I've done for my clients has
9 been done free of charge. Recently, because the way the
10 budgets tends to go, I have been pretty much forced to start
11 charging people that don't have mine ID numbers for at least
12 my travel expenses, but everything else I do for training
13 required operations is soaked up by the grant. I work out
14 of Eastern Oregon University in LaGrande, Oregon, spend a
15 lot of time over here.

16 I did want to mention that as usual, the people in
17 this room are the ones probably doing the job, the ones
18 doing the training and whatnot. I have been involved with
19 the Morris Brothers/MSHA training seminars. Actually the
20 MSHA part has been going on for -- I've been in it three
21 different years. I've probably got about a dozen different
22 sessions under the belt, and it's a really good working
23 model on the way the two groups can work together.

24 I'd say the only limitations that I've seen out of
25 that group are it doesn't get a very big audience. The

1 Morris Brothers gentlemen were saying they might hit 250
2 people, and really it's been opened up just the last year or
3 so. There tends to be a little bit of competition among
4 operators, and it's gotten down to the point where people
5 don't want to give up trade secrets and that kind of stuff.
6 Well, training doesn't necessarily have to be like that.
7 You can do safety training without competing, and so the
8 Morris Brothers/MSHA model does work. If we could get more
9 people in it, it would work even better.

10 I have -- just listening to what's been going on
11 so far, I have more comments than questions probably at this
12 point. One is you brought up the grandfathering issue, and
13 that is -- part 48, when it was put in, took for granted
14 that people knew certain things. They'd been mining for
15 years, and the grandfathering was addressed, and basically I
16 just want to make sure that whatever new regulations come in
17 for the part 46, if that's going to be the name, do have at
18 least the potential for grandfathering experienced people
19 in.

20 Let's see, there has also been a -- I guess it's
21 an implied exemption that on very small operations it has
22 been possible at least on past training where if there's
23 only two or three people at an operation, it gets to the
24 point where is who is going to do the training, you train
25 me, I train you, and that is an issue, and there has been

1 the ability in the past to get an exemption from task
2 training requirements based on if everybody at the site
3 knows the jobs, everybody knows the jobs, and that won't
4 really apply to new miner stuff, but at least maybe that's
5 something else that should be addressed in the standard.

6 One comment I had was I don't think it's
7 productive to lock supervisors into being your trainers. I
8 spent nine years supervising an underground or actually a
9 couple of different underground mines. I can say that
10 supervisors are not necessarily the ones that are best to
11 look out for safety. Supervisors tend to be the ones that
12 -- and this is not the ideal world where a supervisor will
13 know all and do whatnot, but if it comes down to putting out
14 rock and putting on an eight-hour training session, the
15 supervisor is going to be the one that is probably going to
16 put out the rock and just don't lock into the idea of
17 supervisors doing the work.

18 The fairly recent change in requiring a first aid
19 person, competent first aid person, at sand and gravel type
20 operations instead of a supervisor being trained in first
21 aid is kind of an example of where the competent person
22 might be better than a supervisor per se.

23 There's also a new rule -- different subject.
24 There's a new rule that's recently come out relating to
25 experienced miners, and the rule is basically designed to

1 address a lot of the same issues that we've been hearing
2 this morning, and that is you get people that tend to move
3 around, maybe you lapse a little bit. You go 14 months
4 instead of 12 months without getting a new miner training or
5 annual refresher training, and according to the law, you had
6 to go back and get new miner training. Well, at an
7 underground operation it's 40 hours, guys, so, you know,
8 that's a big chunk of time and money.

9 The new standard that has been out since September
10 or October talks about keeping an experienced miner an
11 experienced miner for a given period of time, and I would
12 hope that that issue would also fall over into whatever part
13 46 training requirements there are, because I have seen a
14 lot where you do end up hiring people -- well, ideally not
15 out of a tavern, but if you need somebody to run a truck or
16 run a loader and you're working out of Bly, Oregon, or
17 wherever, there's two buildings in town, a post office and a
18 tavern, and you're probably not going to get a new employee
19 in the post office. So if they can keep a record of
20 training that says, yeah, I was trained two years ago as a
21 new miner or as an experienced miner, I would hope that some
22 of that training would flop over.

23 One other thing that I have noticed. I have been
24 doing my job for four years now. I do tend to not exactly,
25 always end up in the best training locations, and I would

1 suggest that for at least part of the training time that
2 you're doing, a mine site is definitely not always the best
3 place that you can do training. I've done training almost
4 in the back of a pickup truck before. You get five people
5 in the little back room or storeroom in a shop or something
6 like that, and it's not something where anybody is going to
7 be able to sit down and concentrate on the message that
8 you're trying to get across in a safety presentation. So
9 realizing we need to keep things mine specific, don't get
10 too locked into the idea of requiring everything has to be
11 done on a mine site.

12 Another issue that I've jotted down here is I
13 believe the task training should be included as part of
14 training because that is the site specific stuff that really
15 is going to make or break it. If you've got three different
16 people working an operation, you've got a loader, a truck
17 and -- well, maybe a crusher, not guaranteed, by the time
18 you go through the equipment that's there, that's a lot of
19 the training that you need to cover, so task training should
20 be credited as part of the new miner training.

21 One other question for MSHA basically is if -- and
22 I don't know if this is a can of worms or what. I'm going
23 to try and keep it really short. These people have been
24 operating under an exemption from Congress for --

25 MS. ALEJANDRO: Yes, since --

1 MR. SINNER: -- a long time, since 1980.

2 MS. ALEJANDRO: Right.

3 MR. SINNER: And I'm wondering -- we keep going
4 back to the idea that the Act says that they are required to
5 have 24 hours new miner training, eight hours any refresher
6 in the Act.

7 MS. ALEJANDRO: Right, right.

8 MR. SINNER: I'm wondering if there is any
9 possibility or leeway in addressing an exemption for that
10 time requirement of 24 hours as an exemption to the Act like
11 this group has had since 1980 for training in general. It
12 is a different group than a big surface mine in a lot of
13 cases, and potentially, you know, like we've discussed quite
14 a bit this morning, maybe 16 hours for the whole year is
15 more reasonable than requiring 32 between the 24-hour
16 initial and the eight-hour annual refresher.

17 MS. ALEJANDRO: I would say, I mean, for us to be
18 able to do that, Congress would need to amend the minimum
19 requirements in the Act, and I don't think that that's
20 probably likely --

21 MR. SINNER: Okay.

22 MS. ALEJANDRO: -- in the foreseeable future. So
23 I think that realistically, I mean, we're going to have to
24 work with the 24 hours, and I don't know that there's, you
25 know, any basis for us giving any kind of an exemption from

1 that.

2 MR. SINNER: Okay. Well, that was the question.

3 MR. BURNS: Looking at the history of the rider,
4 there were efforts to amend the Mine Act that were never
5 acted upon or were not successful, and that's what really
6 resulted in the rider, but we don't have that discretion.
7 It does take an act of Congress to change those numbers. We
8 have to apply those numbers as written in the Act until
9 Congress changes it.

10 MR. SINNER: Okay. I had, I think, one last
11 comment about first aid training, and there is a difference
12 in first aid as far as this group. The requirements for
13 this group, meaning the exempt operations -- actually, what
14 this group has been required to have is a competent person
15 on site trained in first aid basically in every work area.
16 It used to say a supervisor had to be trained, and now it is
17 just a first aid competent person.

18 The first aid training that is specified in part
19 48, it does not have a time requirement on it. It does not
20 say that it has to be a National Safety Council or a medic
21 first aid, first aid class. It says when you do annual
22 refresher training, when you do new miner training, you will
23 do a first aid course that is approved by MSHA, and that's
24 where if an operator has their own idea on something they
25 want to do, you know, you can get a good, sound class in two

1 hours. You include it in your training plan. It's approved
2 by MSHA as part of the training plan, and you've got that
3 issue covered. But the first aid issue is a two-part thing.

4 MS. ALEJANDRO: Is that typically, I mean, how it
5 is addressed in the plans that you're familiar with, that
6 it's not an eight-hour course? I mean, it's something less
7 than that?

8 MR. SINNER: The training plans that I have had
9 experience with helping operators create them, I basically
10 end up being the trainer, and the class that I bring into at
11 least in annual refresher training is I cover what to do
12 until the ambulance gets there more than anything else.

13 MS. ALEJANDRO: Yes.

14 MR. SINNER: To keep it site specific, sure, if
15 they're way the heck out and they need more, we do that, but
16 by individual training plan, it doesn't have to be an eight-
17 hour or four-hour class. It just has to be -- you know, we
18 include the outline of what I would talk about, and it's
19 worked so far.

20 MS. ALEJANDRO: Okay.

21 MR. SINNER: I think that's it for comments. I
22 blasted a bunch of stuff out.

23 MS. ALEJANDRO: I don't have any questions. Rod,
24 do you have any?

25 MR. BRELAND: I'm not sure I understood what you

1 meant on the experienced miner. You're wanting anybody
2 that's experienced before a new rule would be proposed or
3 final would be deemed as experienced if they were working?

4 MR. SINNER: Well, if you're working on a mine
5 site and you've been doing the job, I think that it's
6 reasonable to think that if you have been doing it, there
7 should be some credit, be a grandfathering or whatever, for
8 the experience that you've already got on the job. I
9 hopefully or I wouldn't think that you would require
10 everybody starting out on October 1, 1999, to have new miner
11 training, and I just -- there should be a grandfathering
12 idea built into the system, and I'm just -- I was just
13 trying to address getting it in there.

14 MR. BRELAND: That's all I have.

15 MR. BURNS: No, that's all.

16 MS. ALEJANDRO: Thank you very much, Mr. Sinner.

17 MR. SINNER: That was easy.

18 MS. ALEJANDRO: The next speaker that we have is
19 Mike Fallon of Wilder Construction.

20 MIKE FALLON

21 MR. FALLON: Good morning.

22 MS. ALEJANDRO: Good morning.

23 MR. FALLON: I'm not going to be as polished and
24 as streamlined as some of the earlier speakers that have
25 been prepared. I've just made some comments as I sat here

1 and listened, but I've been employed with a general
2 contractor, too, for the past 21 years and as a result of
3 some of our activities would come under MSHA jurisdiction.
4 It was 20 years ago that I went through the cooperative --

5 MS. ALEJANDRO: Mr. Fallon, can you hear?

6 (Negative responses from the audience.)

7 Could you maybe pull the mike a little bit closer?

8 Yes.

9 MR. FALLON: Okay. Is this any better, or do you
10 want the other mike?

11 MS. ALEJANDRO: No. Actually I think the thin one
12 that you --

13 MR. FALLON: This is the one. Just talk down low?

14 MS. ALEJANDRO: Yes.

15 MR. FALLON: Okay. Usually I don't have a problem
16 with voice control. They usually throw vegetables at me.

17 At any rate, 20 years ago I went through the
18 cooperative instructor training program, but because of the
19 exemption, we never used it, and then I -- the company I was
20 with, we got into open pit precious metal mining, and from a
21 period of '86 through '92 had to contend with these training
22 requirements. Now I'm with an employer that doesn't do any
23 precious metal. We just have some sand and gravel
24 activities incidental to our bread and butter line of work.

25 So a couple of the comments that I would offer for

1 your consideration have to do, one, with the instructor
2 certifications. As I mentioned, 20 years ago I went through
3 the cooperative program, which was, if memory serves me
4 best, basically how to be a teacher type course of
5 instruction with nothing on content. In the years following
6 that, one person can't do it for a company with operations
7 subject to MSHA from Alaska down to Florida and California
8 over to West Virginia, so we sent selected superintendents,
9 project managers to instructor training sessions typically
10 two and a half days, and these were done through Nevada.
11 Once again, the focus was primarily on how to be a teacher
12 with nothing on content.

13 In addition, I've written letters asking to have
14 competency or acceptance of some of my people based on their
15 experience primarily and their proven track record, so
16 that's one form of qualification.

17 I guess I would hope that MSHA as the agency puts
18 together a program whereby the various operators of all
19 different sizes can send the people for a couple day
20 investment and have them walk away as qualified instructors
21 with the content being both a combination of how to be a
22 teacher but also content that MSHA expects us to put out at
23 these sessions.

24 I keep mentioning content. I know that was one of
25 the hardest things for me to do with some of the smaller

1 scaled operations we had was to try and come up with stuff
2 that would fill eight hours worth of annual refresher. When
3 you go through and you nix off the self rescue devices and
4 explosives that have no part in your operation, it's a
5 little hard to come up with the eight hours and have it be a
6 meaningful experience. My view of first aid is that's
7 something that's done after the fact. This is supposed to
8 be safety training, which is things done before the fact,
9 training to prevent accidents and incidents in the
10 workplace, but as required, you include training. I
11 attempted to de-emphasize that as the major component of the
12 training. So I'd really like to see the agency come up with
13 what they think is appropriate content.

14 Training materials, during this time period of '84
15 through '92 I accessed many of the materials available from
16 MSHA, and some were fairly apropos and meaningful and
17 effective in my view, but many were not, and once again, the
18 independent operator or contractor is left to try and
19 develop his own meaningful, effective training materials.

20 I've been to the academy at MSHA or the MSHA
21 academy in West Virginia and leave with mixed feelings about
22 the content of the materials that I received. I've accessed
23 much of their training materials, and some of it's right on
24 target, but some of it is very dated and stale.

25 When you go through the plan approval, being a

1 contractor that was national in scope of operations, we had
2 to submit the training plan at a number of different
3 district offices, and I'm going on memory, but it doesn't
4 seem to me that it was a very much scrutinized training
5 program, that the boilerplate was readily accepted with nary
6 a comment or two along the way. I think if you're going to
7 require the industry to, you know, try and achieve the goal
8 of preventing these injuries, then we ought to be able to
9 have some constructive evaluations of these training
10 programs.

11 I would hope that the training programs are
12 portable. We have some small operations. I have two fixed
13 locations and three to five portable plants, depending upon
14 configuration, and I'd hate to have to do a separate plan
15 every time we go in and move up, set up in a pit for
16 crushing rock for a highway job. I'd like to have a plan
17 that is perhaps in the name of the company accepted as
18 opposed to the name of a location or a portable plant. I
19 recognize that there are differences within the work
20 environment from one location to the next, but if you look,
21 a lot of the criteria is spelled out in part 48, it's the
22 same from one location to the next.

23 Definitions, when I'd submit my training plan to
24 the training officers, I'd always put in my two cents, which
25 was my previous understanding and acceptance of newly

1 employed but experienced miner, which meant that somebody
2 has been in the industry and working with this piece of
3 machinery or this type of equipment could be considered
4 experienced. I don't think that we're much different than
5 many others. We try to hire people that are experienced
6 that have some knowledge of what it is we expect them to do
7 out there. It makes them a more productive employee for us,
8 not trying to satisfy a particular MSHA requirement but rare
9 is the time where we hire somebody fresh out of high school
10 and put them into the workplace. We have a pretty stable
11 work force in this company, but in my past life, we were
12 around the country, and we did have to hire locally, and as
13 a result, we had a lot of newly employed people. So we were
14 left with a decision, are these people experienced or not,
15 and a bulldozer operator working on a highway job for 20
16 years could come to what is a mine site and be considered a
17 new employee. That never did seem right, so I always wrote
18 that clarification that because of their prior experience, I
19 viewed them as an experienced miner.

20 Annual refresher, one of our mine sites was at
21 high altitude and snowbound six months a year, and we
22 consequently had a six-month season at that mine site, and
23 we were deemed on the annual refresher, or lack of training,
24 as you mentioned earlier, is an immediate withdrawal, which
25 basically shuts down the operation until you get the members

1 of the crew taken care of. We were dinged because we didn't
2 have the documentation or training requirements, and at a
3 six-month-a-year operation, I'd like to see some
4 clarification of this annual refresher. Are we talking 12
5 months of continuous employment, or are we talking calendar
6 year basis?

7 MS. ALEJANDRO: You mean -- I guess I'm not clear
8 on what issue it is that you're flagging.

9 MR. FALLON: Let's say we hired this person. He
10 came to work June 1st, and we took care of the newly
11 employed experience miner training requirement. Okay?

12 MS. ALEJANDRO: Okay.

13 MR. FALLON: Now we come back. It's a year later.

14 MS. ALEJANDRO: Okay.

15 MR. FALLON: Or actually five months later. It's
16 June 1st again, and this person by virtue of this rigid
17 interpretation is entitled to or required to have annual
18 refresher training even though they've worked less than five
19 months for us. So I'd like to have it spelled out that -- I
20 think the intent was after 12 months of employment that
21 people receive refresher training, but I think it is
22 enforced on a calendar year basis.

23 MS. ALEJANDRO: I see. Is the question then
24 somebody comes on, you know, is hired at what -- I mean, and
25 they get their whatever initial training it is that they're

1 required to have. Are they also required to have that
2 refresher training in that year as well? Is that --?

3 MR. FALLON: Well, what I was -- part of the
4 thinking was that if you work six months this year and then
5 six months next year, at the beginning of the third year you
6 better have your annual refresher done because you've worked
7 a total of 12 months --

8 MS. ALEJANDRO: I see. So you're talking about --

9 MR. FALLON: -- versus some of these operators
10 that work year round.

11 MS. ALEJANDRO: Whether it's, you know, based on a
12 calendar regardless of whether you're working or not or --

13 MR. FALLON: Correct.

14 MS. ALEJANDRO: -- whatever your cumulative months
15 of employment are?

16 MR. FALLON: Correct.

17 MS. ALEJANDRO: Okay.

18 MR. FALLON: And last but not least, I've heard
19 some commentary today about the consultative branches of
20 your various OSHA agencies, typically state plan states, and
21 I, too, kind of share the same sentiment. You know, a year
22 ago, a little over a year ago, MSHA conducted what I think
23 they called the walk and talk, and it was in response to all
24 the transportation fatalities, and I checked with my three
25 or four locations that had that visitation, and to a man

1 pretty much they were very receptive to that approach of
2 trying to provide a safer workplace. It had took them some
3 time to get over the initial skepticism that this guy was
4 just going to talk to them about things of accident trends
5 and what we might do as the industry to avoid repeating
6 that, but once they broke through that shell, it was pretty
7 much a participative dialogue, which is very unusual for the
8 agency with the people that it's charged with protecting.
9 So I encourage that sort of thing, and I would hope that the
10 agency does take into the input that they get at sessions
11 like this. I remain -- I don't know if the word is
12 "skeptical" or "disillusioned" perhaps. It was four years
13 ago where we tried to partner with MSHA to come up with a
14 collective consensus on guarding requirements, and it wasn't
15 just the local office. It was at very high levels, and it
16 went no where, so, you know, I'm optimistic, but I'm sure
17 the industry, as you've heard today, is willing to share
18 what they have, which is not only materials but also a lot
19 of collective experience.

20 MS. ALEJANDRO: Questions.

21 MR. BURNS: Yes. I guess my question deals with
22 the annual refresher training.

23 MR. FALLON: Right.

24 MR. BURNS: Now, I'm not an expert on training.
25 My recollection is -- and I'll have to look into this.

1 Well, the Act says no less frequently than once each 12
2 months. Now, that's not necessarily specific along the
3 lines of what you talked about, but I do believe the idea
4 behind the annual refresher training was based on time and
5 when people need to be refreshed about nonrepetitive type
6 activities and that perhaps they were looking at, you know,
7 a calendar period versus, you know, a work period, so, you
8 know, that is something I'll look into.

9 MR. FALLON: Well, you know, there's other highway
10 contractors that are affected as me, and you might have a
11 guy who gets around a crushing spread in support of the
12 aggregate for a highway job for one month out of a given
13 season or a calendar year, and you take the case of Alaska,
14 much of our work is very seasonal limited to seven, eight
15 months a year. So one month he's around a crusher that
16 supports the highway crew, and then he's back to the normal
17 highway construction activities, and lo and behold, comes up
18 in the 13th month after he did that, he's back around a
19 crusher supporting a highway crew. Technically, he's called
20 for annual refresher.

21 MR. BURNS: That's one way of reading it.

22 MR. FALLON: Right.

23 MR. BURNS: Okay. I mean, that is something I
24 think we'll have to look at.

25 MR. FALLON: Well, it would be nice to have a

1 little latitude there. It's not as though the person hasn't
2 been receiving, as you heard from others, routine safety
3 training through safety meetings held with the crew or other
4 forms of training.

5 MS. ALEJANDRO: Anybody have anymore questions?

6 MR. BRELAND: Well, just to follow up on that.
7 One month, you said, that this employee might have worked
8 and it's been 12 months, but given the example you gave,
9 this individual might be 12 years before they got 12 months.
10 You wouldn't be proposing --

11 MR. FALLON: That's true.

12 MR. BRELAND: You wouldn't be proposing that that
13 would be --

14 MR. FALLON: That's true. That's the other end of
15 the extreme.

16 MR. BRELAND: Yes. So I mean, I think you're
17 right about you got to consider the possibilities when
18 you're considering the flexibility.

19 MR. FALLON: Right.

20 MR. BRELAND: Now, if you came on the 13th month
21 and you had planned to have the annual refresher completed
22 in a certain amount of time might be different than saying
23 just only on the 12 months itself I mean when you're
24 considering making comments.

25 The other thing on the academy material, you said

1 you been to the academy. Was that in recent times?

2 MR. FALLON: In 1985.

3 MR. BRELAND: Okay. Because the academy is under
4 a revitalization, if you will. They're doing an awful lot
5 of new program materials. They're trying to gear it more --
6 a lot of it to metal on metal industry.

7 MR. FALLON: That's good.

8 MR. BRELAND: They are looking for a lot of sand
9 and gravel kind of issues. I think you're going to find it
10 has moved in a different direction in recent times, and part
11 of our program will be to try to distribute materials
12 through again state organizations and out to our field
13 offices, and as we get scattered around, one of the things
14 we'd like to do is have a good listing of materials in each
15 district office and where we have training specialists
16 located, so just for your knowledge there.

17 MR. FALLON: That's great, and I hope that they
18 start to de-emphasize the computer training programs they
19 had back there, which we can get locally without having to
20 go into Beckley. There's been -- I counted one time -- and I
21 think it was preparatory to our meeting four years ago --
22 something like 20 percent of the course offerings were in
23 the area of learning computer software programs and how to
24 apply them, you know, and that just didn't make sense to me
25 when I could get it locally and that I would expect to go to

1 the academy to get training in, you know, ground control or
2 something like that.

3 MR. BRELAND: Yes. Well, some of that was
4 intended I think in recent times was to further educate
5 employees within MSHA to use some of those programs to
6 better work with people in the field, but the academy
7 intends to do some traveling. We're going to try to have
8 some programs set up in the west. There's some
9 partnershiping that's going on with some of the -- like
10 University of Nevada, Reno, and Colorado School of Mines, to
11 try to offer some of those kinds of courses out west, and
12 we'd be interested in hearing from other, you know, schools
13 that are out there presently as a means of trying to again
14 get materials out and some help.

15 MR. FALLON: You know, and I know that MSHA has
16 delivered grants to -- you keep saying a number of state
17 agencies. I'm familiar with Idaho, and I think even here in
18 the State of -- Washington is across the river. They've
19 given it to university extension services typically, and
20 I've seen a variety or a variation of what gets delivered
21 then from that entity back to the industry. So, again,
22 anything you can do to streamline consistency and content, I
23 think, is beneficial in the long run.

24 MR. BRELAND: Okay. That's all.

25 MS. ALEJANDRO: Thank you very much.

1 We have a choice now. I mean, we may want to take
2 another 15-minute break. We may want to break for lunch.
3 We've got two more people who have signed up to speak.
4 There may be other people who sitting here listening to what
5 other people have said want to speak who haven't signed up
6 or people who have already spoken who may want to come back
7 up again. Does anybody -- I mean, do people want to break
8 for lunch now, or do they just want to keep on? Anybody
9 have any particular -- nobody wants to speak --

10 UNIDENTIFIED VOICE: Let's get going and get it
11 over with.

12 MS. ALEJANDRO: Okay. Do you want to take a short
13 break now and then come back in 10 or 15 minutes and then
14 just pick up in ten?

15 MR. BURNS: Make it ten.

16 MS. ALEJANDRO: Ten?

17 MR. BURNS: Yes.

18 MS. ALEJANDRO: Okay, ten minutes. It will be
19 about 10 till 12:00, and then we'll just finish up when we
20 get back.

21 (Short recess.)

22 MS. ALEJANDRO: Back on the record.

23 The next speaker that we have on our list is Jock
24 Dalton from Dalton Rock, Incorporated.

25 JOCK DALTON

1 MR. DALTON: I am Jock Dalton, D-a-l-t-o-n.

2 MS. ALEJANDRO: I think you're going to have to

3 speak up. Oh, it's not on.

4 MR. DALTON: It's on. It just doesn't work very

5 well.

6 (Pause.)

7 Any better?

8 MS. ALEJANDRO: Can you hear him? Speak. Say

9 sentence or so.

10 MR. DALTON: Okay. I'll try and talk as loud as I

11 can here.

12 MR. BRELAND: There you go.

13 MR. DALTON: Better now? Okay.

14 MS. ALEJANDRO: Yes. I think if you just make an

15 effort to, you know --

16 MR. DALTON: Okay. Get close?

17 MS. ALEJANDRO: Yes, yes.

18 MR. DALTON: Since I'm hearing impaired, I may be

19 revisiting issues that have already been addressed here.

20 One of the things that I'd like to actually ask

21 you is what sort of attempts are being made in this training

22 program to try to make the training stick to the employee.

23 You know, there's some addressing the qualifications of the

24 trainers, but dealing -- what we're dealing with is the

25 employee. That is what this is all about is training them

1 and bringing up their skills and addressing safety and
2 operating practices that make them skilled and productive,
3 and being skilled and productive involves being safe.

4 So there are lot of operators here that have spent
5 a lot of time and money trying to achieve this goal, and
6 we're generally all looking for the same goal, and it's just
7 a matter of how do we achieve it, and I think that's one of
8 the reasons why a couple of people wanted MSHA to be more
9 involved in the training itself, because they are trying to
10 get MSHA in a proactive mode because it has potentially far
11 greater resources than the individual operator, especially
12 when we're talking about the small operator.

13 I'm trying to skip around, because these are -- I
14 didn't organize this before, but --

15 MS. ALEJANDRO: That's fine.

16 MR. DALTON: -- I was just reacting to what was
17 said.

18 A lot of operators, because it's part time and
19 seasonal, are going to lose employees, trained employees
20 over the winter because they can't keep them employed, and
21 the motivated employees, which are the ones that are
22 probably most likely to respond to the training positively,
23 to retain the most, are the ones that are most likely to be
24 motivated to get another job and to move on. So part of
25 what we're doing in training is trying to achieve either

1 retaining employees or creating a pool of skilled employees
2 from which to draw. Again, this works in the benefit of the
3 employee and, you know, the miner himself.

4 You know, part of your -- you know, if the
5 training records or, you know, proof of training follows the
6 employee, then that means that the -- you know, you as an
7 employer, someone walks in the door and say, well, yeah,
8 I've got documentation of training, and that makes him a
9 much more desirable employee. The flip side of that is that
10 by doing this it creates a barrier to entry to employee --
11 you know, potential employees who do not have that training.
12 You know, it's give with one hand, take with the other.

13 In our operation and with I think most other
14 operators, what we are interested in is giving opportunities
15 to employees, because with the opportunities, we also get
16 something back.

17 Another thing to address is with the individual
18 miner, how to get him to become a stakeholder. The way
19 MSHA's enforcement is currently structured, the concept is
20 that the employer is the one who determines what happens in
21 the workplace, and, you know, I've seen other types of
22 regulation where the employee is the one who is considered
23 to have the discretionary power, and the employer has little
24 or no culpability. These two extremes tend to eliminate,
25 you know, one or the other as having a genuine concern.

1 You know, I take the example of the HMO. If
2 there's no co-payment, you know, the individual has the
3 temptation to go into the doctor for any little minor ache
4 or pain. If there's even a token co-payment, say \$5, \$10,
5 they think twice about that little stuff, and they start
6 saying, well, I want to save this for something that is
7 serious. One of the things -- there's an opportunity by
8 having the training apply to everyone in the mining
9 industry, and that is that if you can make the employee
10 become a stakeholder and if you have the employee even to a
11 very minor extent be a party to the violation and especially
12 by using -- if you're trained and you have the documentation
13 of the training, you should have a certain amount of
14 responsibility in the violation because you should know
15 better.

16 Now, the question is, you know, coal mines or
17 whatever, historically the idea was that the miner didn't
18 have a choice, he was ordered to by the operator and, you
19 know, it was either that or be fired, and especially for our
20 small operators, we would much rather rehabilitate a miner
21 than to fire him if we can achieve the level of safety,
22 because we've invested a lot in his skills.

23 And another thing is, you know, what we were
24 looking at is essentially imposing a new level of
25 regulation, because it's been in abeyance on a lot of small

1 operators, and, you know, each operator is supposed to have
2 an approved plan at a deadline. They're in charge is
3 supposed to have examined and approved each plan before this
4 deadline without an increase in man power. So how do we
5 keep the ability to operate from being held hostage during
6 the implementation period? And one of the things that
7 comes to my mind is the idea of approval, you know, rather
8 than outright approval, provisional approval of a plan. If
9 you meet certain minimum standards during this provisional
10 -- you know, you can get a provisional acceptance or
11 approval of your plan, and that gives you more time to flesh
12 it out or to meet changes and suggestions, and that way
13 you're still operating in the letter of the law. You're
14 having an approval, but by making it provisional, you're
15 giving that window to where the details can be worked out,
16 but by setting the standards for a provisional approval high
17 enough to insure the basic level of safety where everybody
18 is covered.

19 So that's all I have.

20 MS. ALEJANDRO: Thank you very much. Does anybody
21 have any questions?

22 MR. BRELAND: Just on this provisional approval
23 maybe so I understand. Are you talking about like something
24 that you would submit or a generic outline that says if you
25 start off with this, that's okay to start with until it's

1 looked at later? I'm not sure I understood what --

2 MR. FALLON: Yes. I think in this process -- here
3 you learn an awful lot about what people think should be
4 involved in the basic plan, and I think an outline is the
5 place to start, and then you have to flesh out -- you know,
6 as it's questioned, you have to flesh out what you really
7 need to achieve that level of safety to which everyone is
8 comfortable with as an interim measure.

9 MR. BRELAND: Okay. That's all.

10 MR. BURNS: I guess I just had a question on the
11 -- you operate during certain periods of the year, and then
12 you're down a certain period of time. Is that --

13 MR. FALLON: Well, actually we operate, you know,
14 12 months a year, but in Western Oregon you don't move
15 overburden in the winter. The EPA would have something to
16 say about that. So in our particular operation, we have a
17 certain -- we have a certain number of people that are
18 involved in, you know, moving dirt that can't work for about
19 six months a year. So you have to -- you know, what you
20 have is a seasonable operation superimposed on a full-time
21 operation, and so you have -- for that number of employees,
22 you have the same problem as if it was a seasonal operation,
23 although we don't -- aren't like some of the portable
24 crusher operators who move around, we still have to, you
25 know, try to retain those employees during the off season,

1 and it's very difficult.

2 MR. BURNS: Is that something that over time is
3 somewhat predictable and perhaps, you know, we could work
4 with state grants to get a pool of new, you know, miners
5 that would be -- at least have some training before it's
6 time, you know, for the start up in the spring?

7 MR. FALLON: You know, the question is, do you
8 have the pool of trained miners.

9 MR. BURNS: Yes.

10 MR. FALLON: And that gets down to how much other
11 activity is in the general area and whether they find better
12 jobs doing something else. Mining and construction skills
13 tend to be very interchangeable, and you have people that
14 float back and forth between those kind of jobs. You know,
15 one thing you might have to look at is someone who is
16 trained, gets his 24 hours of training, then works in a mine
17 for a season and then goes off and works two or three
18 seasons in construction. When he comes back, do you treat
19 him as a new miner again, you know, even though, you know,
20 what he's been doing is equivalent skills, and how do you
21 document it, you know.

22 MS. ALEJANDRO: I mean, is that your experience,
23 that you may lose an employee out of the mining industry for
24 some period of time but that they may float back in, you
25 know, a year or a couple years later?

1 MR. FALLON: Yes, and mining, construction,
2 transportation. You know, like for this particular seasonal
3 stuff, you have several truck drivers, and the truck drivers
4 may be employed in construction. They may be employed over
5 the road. They may be doing anything, you know, in between,
6 but, you know, once they've driven a dump truck and they
7 know the basic operating rules, you know, really those
8 skills stay with them.

9 MS. ALEJANDRO: Yes.

10 MR. FALLON: It's a matter of -- you know, my
11 personal feeling is it's refresher training, you know. They
12 know the basics, so what you have to do is go back and make
13 sure that they haven't forgotten certain, you know, safety
14 -- aspects of safety, watching them berms, you know, dump
15 site safety, things like that. You're pretty much kind of
16 refreshing them with the idea that okay, you're working on
17 the mining end now, you know, these are the things you have
18 to watch out for.

19 MS. ALEJANDRO: Thank you very much, Mr. Dalton.

20 The last speaker we have on our list is David
21 Chavez from Peter Kiewit Sons.

22 DAVID CHAVEZ

23 MR. CHAVEZ: I always wanted to follow a music
24 act, so maybe this is my opportunity.

25 If I could, I'm just going to take a few minutes

1 to address some of the concerns we have. Peter Kiewit is a
2 fairly large organization, and we have numerous mining
3 operations throughout the southwest that are currently
4 exempt from these current part 48 training standards. Of
5 course, I say exempt. I don't mean that we -- I know MSHA
6 doesn't have the monies appropriated to inspect our
7 facilities, but most of our operators still do the training.

8 Listed in the November 3, 1998, Federal Register,
9 I'm just going to address those questions, and then, of
10 course, if anybody has any comments to make afterwards, I'll
11 do that, but I'll just go down through the questions if I
12 could.

13 MS. ALEJANDRO: Okay. I just want to check to see
14 whether people can hear him or whether -- do you need to --
15 maybe pull the -- I think if you pull the mike closer that
16 it will work.

17 MR. CHAVEZ: How's that? Okay. And like I say,
18 what I'll do, is I'll just go down the list of the questions
19 --

20 MS. ALEJANDRO: That's fine.

21 MR. CHAVEZ: -- that were published in the Federal
22 Register and try to address them as much as I can.

23 Regarding the new miner training, there's seven or
24 eight specific items that are listed under new miner's
25 training. The question was, which of these subjects should

1 be taught before a new miner is assigned to work even if the
2 work is done under close supervision. Our response to that
3 is a new miner should be taught all the items listed in
4 section 115 of the Act. The one thing that brings us to
5 concern is the portion dealing with first aid. I think it's
6 important that in order to do proper training in first aid,
7 it requires additional training above and beyond what the
8 Act requires, and a lot of people mentioned in this room
9 here today that they go off and six or eight hours
10 additional training in first aid, and I believe that's one
11 item that we could possibly not put a lot of emphasis on
12 when we can get it done in other areas, specifically in
13 other standards or in additional new standards that are
14 going to be coming out.

15 Number two, should training for inexperienced
16 miners be given all at once or over a period of time such as
17 several weeks or months? Our response is with the exception
18 of a short block of instruction at the beginning of
19 employment, training should be spread out over a period of
20 months.

21 Question number three, should this decision be
22 left to the discretion of the mine operator? We believe the
23 mine operator should have as much discretion as possible and
24 flexibility to do not only his training operations but also
25 his safety responsibilities under the Act, so I think it's

1 important that the operator be given the flexibility and the
2 latitude to do whatever initial training is required in
3 order to get the personnel to do their functions, that the
4 remaining training, 16 hours, 20 hours, whatever we decide,
5 should be done over a period of months in order to comply
6 with the standard keeping in mind that we realize that the
7 Act does say 24 hours training, and we're not going to get
8 beyond that.

9 Question, what are the advantages and
10 disadvantages of spreading training over an extended period
11 of time? We see two advantages. One is we try to place
12 together training done in groups of people in order to get
13 the best -- get the employees together in order for them to
14 exchange ideas when it comes to safety. In addition,
15 occasionally we do a one-on-one training, but we like to get
16 three or four employees together and exchange ideas once
17 they've been out on the job and have certain concerns.

18 Second of all, addressing the concerns especially
19 for a lot of the small operators, especially in this part of
20 the country where a lot of work is seasonal where they may
21 hire a person today, if we require them to do the 24-hour
22 training over a period of three days, a month from now they
23 may lose a person. That's an economic disadvantage to them
24 as we see it.

25 Question, should supervisors be subject to the

1 same training requirements as miners, and our response to
2 that is yes, absolutely. A lot of our supervisors are also
3 instructors, and they should have to go through the same
4 training as hourly employees.

5 Under task training, the question is, should
6 training be required whenever a miner receives a work
7 assignment that involves new and unfamiliar tasks. Our
8 response is yes to insure that the job is accomplished in a
9 safe and efficient manner.

10 Annual refresher training, should specific areas
11 be covered during annual refresher training? Yes. The
12 subjects that should be covered is not only what's required
13 under the Act, but it should be those subjects that the
14 operator feels is necessary to cover for his or their
15 specific operation. One good example brought up earlier
16 today was some operations do blasting, some don't do
17 blasting, and I think it's imperative that the operator be
18 given the flexibility to determine what type of training is
19 required for their operation.

20 Question, can the eight hours of annual refresher
21 training required by the Act be completed in segments of
22 training lasting less than 30 minutes? Our response to that
23 is yes. A lot of operators, most operators, conduct safety
24 meetings. A person's attention span is probably only 10 or
25 15 minutes when it comes to a safety meeting, and if we are

1 allowed to teach the eight-hour refresher training over a
2 period of 10 or 12 months during safety meetings, I believe
3 that we're going to be able to get a more effective training
4 program by doing it that way rather than employees having to
5 sit through a full eight hours of classroom training, which
6 we've all been through at one time or the other, and
7 sometimes it can be quite boring, depending on the
8 instructor and the content.

9 Training certificates, question, should the
10 records of training be kept by the mine operators at the
11 mine site, or should the regulation allow records be kept at
12 all other locations? Our response to that is that should be
13 at the discretion of the operator. A lot of small operators
14 are able to keep their records at their location.
15 Operations like ourselves, when most of our records are
16 computerized, I think we should be allowed to keep them on a
17 computer data base, and if the inspector asks for them, we
18 could fax it to them or deliver them within a matter of
19 hours or at least by the following day, or in our case, the
20 inspector generally comes back for two or three days because
21 of the size of our operations.

22 Qualifications of instructors, should there be a
23 minimum qualification for persons who conduct miner
24 training? This is -- my response isn't much different than
25 what's currently in part 48, and I have to look back at my

1 experience, especially dealing with small operators. I
2 believe that the -- who determines the qualifications for
3 instructors and who is selecting instructors should be
4 totally up to the operator. The operator knows the people
5 that work for him. He knows the qualifications of the
6 person. He knows their experiences. He knows their
7 knowledge and abilities, and the operator should be allowed
8 -- should be given as much flexibility as possible to
9 determine who on their staff, either a supervisor, a safety
10 person, a training person -- they should be allowed to
11 determine who is qualified to teach in their operations.

12 A gentleman before me or two people before me
13 mentioned of going to the two and a half hour days of the
14 certification to become instructors. They teach you there
15 how to teach. They don't teach you experience, and they
16 don't teach you the knowledge of the operation. That only
17 comes by working there, and I believe that the operator is
18 the person who should determine who is qualified to teach
19 there.

20 Finally, operations similar to ours, we do a lot
21 of -- we have a lot of crossover between MSHA and OSHA. I
22 believe it's essential in order to do proper training that
23 somehow in this regulation that OSHA training that's
24 currently being done should be allowed to carry over to the
25 MSHA training in one manner or another at least giving

1 credit. For example, lock and tagout, confined space, first
2 aid training, all these subjects that we currently do now on
3 the OSHA side of the house should be allowed to carryover to
4 MSHA, and I believe that would benefit the small operator,
5 too. For those that -- especially for those that do a lot
6 of construction work, it would definitely benefit them.

7 Finally, once again, I have to gear these
8 responses here towards the small operators. There are three
9 things that are important in this new regulation that I
10 think is important for the small operator. One, like I
11 mentioned earlier about when it comes to trainers, I think
12 that the discretion and latitude given to the operator to
13 determine who a trainer is, is essential.

14 Two, the plan that is written, I don't believe
15 MSHA has the desire or the man power to look at all these
16 training plans that are going to be shipped into district
17 offices to determine who in the heck is going to approve
18 these plans. Different in part 48, I believe that the plan
19 should be written and not submitted to MSHA, and as -- a
20 person's -- maybe a way should be put on it when an
21 inspector comes in and does an inspection, if they find that
22 there's a lot of accidents, a lot of citations, then maybe
23 the inspector should be given the latitude to look at the
24 plan. I don't think we should burden some MSHA and other
25 people to look at training plans when we want the inspectors

1 out in the field enforcing safety and health centers in
2 order to eliminate accidents, and I think that's our -- of
3 course, essentially, that's our goal in all this is to
4 eliminate accidents.

5 Then, finally, once again, I think it's important
6 that the operator, especially the small operator, be given
7 whatever flexibility and discretion is allowable under the
8 Act to determine their own training needs, to determine
9 their training people and to determine what their plan is if
10 anybody knows what their needs are. We've had this
11 exemption for a lot of years, and a lot of this is new to a
12 lot of people, and I believe -- once again, it's important
13 that the operator determine what those needs are.

14 Finally, I believe that there should be a
15 grandfather provision in the regulation that should allow
16 all those employees that are currently employed by operators
17 to be grandfathered so they will not be required to do the
18 24-hour training and eight-hour refresher training once the
19 law becomes in effect. Of course, subsequently, after that,
20 they'll have to take the eight hours training, but I'm more
21 concerned about those employees that are currently working
22 there now. I believe they should be grandfathered when this
23 new regulation takes effect sometime in '99, we think, and
24 those are my remarks.

25 MR. BRELAND: I have a couple things, Dave. On

1 the -- this is going backwards, I guess. You said the
2 grandfather provision -- and that's come up a couple times,
3 but, again, with this particular segment of the industry
4 that there's a lot of seasonal work -- have you got an idea
5 in mind for definition of grandfather, somebody working at
6 the time, worked the last year, so much in the last several
7 years or what?

8 MR. CHAVEZ: Well, naturally I would ask that it
9 would be someone who is currently employed at the time that
10 the regulation takes effect, but going beyond that, I would
11 suspect that someone who has worked in the industry over a
12 period of time has some experience either with that operator
13 or other operators. You know, I'll just throw a number out.
14 Maybe six months, six months experience. They wouldn't be
15 required to take that 24 hours training but maybe just the
16 eight hours training and, once again, have it done over a
17 period of four to five months so the operators -- they could
18 get all their employees in.

19 MR. BRELAND: Okay. Then also you talked about
20 the annual refresher of being in the segments of less than
21 30 minutes, and that could be a concern for, again, the
22 tracking requirement. Do you have something in mind on how
23 that could be done?

24 MR. CHAVEZ: Yes. Actually, we currently do it
25 now. Since you come look at our records, that's the way we

1 do it anyway, but we have safety meeting rosters. At a
2 minimum, there's a roster printed, and we put a copy of that
3 in the employee's file to designate what training he had
4 that particular month, and we check it off in the employee's
5 file. That's the easy way to do it on the paper side.

6 We also have a system to where we have it
7 computerized. We list all the items that are required under
8 MSHA and then check it off on the date that was conducted
9 and by who it was conducted and the duration of the time
10 that it was conducted, because I think at a minimum, I think
11 just simply putting it in the employee's file would be
12 adequate to where the inspector can look at it if necessary.

13 MR. BRELAND: Okay. Then you talked about the
14 operator making the determination to select who is
15 qualified. There's a lot of people talking about that as
16 well. Again, I mentioned earlier with one of the other
17 speakers that what if it's found in the on-site review maybe
18 by an inspector or somebody else that the person that's got
19 qualifications is really not doing a good job of teaching?
20 Do you have anything in mind for a remedy of that kind of
21 problem? It's likely to occur at some point in time.

22 MR. CHAVEZ: And it probably would occur. To be
23 honest with you, I don't see much different than what we're
24 currently doing now, because we send someone in to do -- to
25 become a certified instructor, and once again, they just

1 teach in content but no really experience or knowledge of
2 the operation. I believe that's the responsibility of the
3 operator, that the operator determine who is competent to
4 teach, and if the inspector determines that the person is
5 not competent, then MSHA should address that issue
6 specifically with that operator, but don't penalize, for
7 lack of a better term, the people who are going to do a good
8 job and pick competent people in order to get a good
9 effective training because it costs money, and I think most
10 companies are going to pick qualified quality people to do
11 proper training. Let the inspector on the site, if he
12 determines that the person is incompetent, let him address
13 that with the operator.

14 MR. BRELAND: Okay. That's all I have. Thanks.

15 MS. ALEJANDRO: Kevin?

16 MR. BURNS: No, I don't have any additional
17 questions.

18 MS. ALEJANDRO: Ros has got a question.

19 MR. CHAVEZ: Yes, ma'am.

20 MS. FONTAINE: Yes. Do you do most of your
21 training in-house, or do you bring contract employees who do
22 it for you?

23 MR. CHAVEZ: Oh, we do all -- we do three. We do
24 training in-house, we hire outside contractors, and then we
25 take advantage of the grants program in Arizona given to the

1 state mine inspector program. We take advantage of the
2 grant program there, too, so we do all three.

3 MS. FONTAINE: Okay. Using MSHA's definition of
4 19 or less is a small mine, can you give me an estimate of
5 what it costs you to train your employees a year?

6 MR. CHAVEZ: Well, we have a pretty good staff of
7 people. There's probably eight or nine of us in the safety
8 department. Well, my budget is actually \$1.5 million, so I
9 guess that gives you a pretty good idea, but, once again,
10 we're talking OSHA training, too.

11 MS. FONTAINE: Right.

12 MR. CHAVEZ: Not just MSHA. We do all kinds of
13 training, including -- we have ready-mix drivers, and we do
14 defensive driving training there, too, but we do a lot of
15 training.

16 MS. FONTAINE: Okay.

17 MR. BURNS: How many employees does that cover? I
18 mean both OSHA and MSHA. I'm just curious.

19 MR. CHAVEZ: About 3,000 employees, OSHA and MSHA,
20 in the areas that I'm responsible for. Peter Kiewit wide,
21 we have about 16,000 employees.

22 MR. BURNS: And that's what that training budget
23 addresses?

24 MR. CHAVEZ: Yes, the 3,000 employees.

25 MR. BURNS: Okay.

1 MS. ALEJANDRO: Thank you very much, Mr. Chavez.

2 MR. CHAVEZ: Yes, ma'am.

3 MS. ALEJANDRO: All right. We've reached the end
4 of the list of people who signed up to speak. I'd like to
5 ask, is there anyone who hasn't signed up who has now
6 decided that they would like to come up to the mike and give
7 some comments?

8 (No response.)

9 No hands. Is there anybody who has already spoken
10 who feels like they want to add something more?

11 (No response.)

12 Okay, no hands. What I'm going to do now is just
13 give you a summary of some of the issues that have been
14 touched on in some of the earlier meetings. You've heard a
15 lot of them already today.

16 One of the issues that we've gotten some comments
17 on has to do with contractors, and there's kind of two
18 issues here. A number of people have indicated that they
19 believe that contractors should be primarily responsible for
20 the comprehensive training that their employees receive and
21 that the operator of the mine site should give these
22 contractor employees site specific training but that the
23 burden, the responsibility for the 24 hours of initial
24 training and the eight hours of refresher training should
25 fall primarily on the contractor's shoulders and should not

1 be the responsibility of the mine operator.

2 Another issue related to contractors -- I sort of
3 referred to it earlier -- is that we've gotten some comments
4 on levels of training. I mean, employees do a variety of
5 different things. I mean, some of them are directly
6 involved in the extraction and processing process, and these
7 other categories of employees who do come onto the mine
8 property but may not be involved in the actual mining
9 process, I mean delivery people, et cetera, and we've gotten
10 a number of comments on the type of training that those
11 categories of employees should be required to have under a
12 proposed or final rule.

13 We've gotten a lot of comments on, you know, how
14 much initial miner training needs to be given before the
15 miner is allowed to begin work. A lot of people advocated,
16 you know, following the part 48 model, which is eight hours
17 of training and then you deliver the 16 additional hours at,
18 you know, some later point in time. Other people have said
19 two hours, four hours. People have said, you know, cover
20 specific topics up-front with no specific time period
21 required. We've gotten a number of comments from operators
22 urging us to have these requirements be very flexible and
23 also reduce any kind of administrative or paperwork burden
24 that's going to be put on them.

25 As you've heard today, we've gotten a number of

1 comments on what appropriate minimum qualifications are for
2 instructors who give training under part 46. We've gotten a
3 number of comments recommending that we allow flexibility in
4 record keeping and don't have a requirement that records be
5 kept at the mine site, but it could be kept at some central
6 location and then given to the mine inspector upon request
7 within some minimum period of time.

8 Then, finally, we've gotten a number of comments
9 on how much time beyond the date that the proposed -- or
10 excuse me, the final rule is published, how much time does
11 the industry and the trainers need to come up to speed to
12 comply with training regulations. Today we heard six
13 months. We've heard people advocate, you know, a year,
14 other people advocating shorter periods of time, so we've
15 gotten a number of comments on that issue.

16 So if, in fact, you're thinking that maybe you
17 would like to submit something in writing, I mean, those are
18 the issues that we've heard comments on. If you'd like to
19 address those, I encourage you to do so.

20 To close, I'd just like to give you some idea of
21 what happens from this point on. As I mentioned to you,
22 we've got a couple more public meetings. The last two are
23 the week of January 5th in Dallas and then Atlanta, Georgia.
24 We are expecting a draft, the final draft, from the
25 Coalition. A number of you got copies of a draft from the

1 Coalition, and we're expecting the final draft before
2 February 1st. At that point after we get the draft and any
3 other comments anyone has chosen to submit, we're going to
4 work pretty quickly to come up with a proposed rule, which
5 ideally we'd like to publish sometime in March or April.

6 After the proposal is published, there's a comment
7 period both through public hearings. We're anticipating
8 having at least two public hearings and maybe more depending
9 on what, you know, time schedule we've got, and then
10 additionally at that point you can also submit additional
11 written comments, attend the public hearing, you know,
12 whatever you feel comfortable doing.

13 The record will close, and then we are under an
14 obligation set by Congress to publish a final training rule
15 on or before September 30, 1999, and then depending on, you
16 know, what the compliance deadline is, at some point after
17 that, the mines that are affected by this training will have
18 to come into compliance with the requirements that are set
19 in that final rule.

20 I would encourage you, again, to submit your
21 comments by February 1st. Feel free, you know, to contact
22 MSHA if you've got any questions. Additionally, I mean, for
23 those of you who have got access to the World Wide Web, MSHA
24 does have an Internet home page, and the address is
25 www.msha.gov. MSHA is m-s-h-a. If you go to the home page,

1 there's a button or a bar called "training regulations." If
2 you click on that, we're intending to keep, you know, up to
3 speed on any documents that are generated. I mean, that
4 will be a quick way for you to figure out what the status of
5 this project is.

6 That's about all I have. I mean, does anybody
7 have any questions? Otherwise, I mean, we'll just say thank
8 you very much for coming, particularly thank you very much
9 to those of you who have chosen to speak today, and please,
10 you know, send us anything that you want considered as we
11 formulate this final training regulation. Thank you very
12 much.

13 (Whereupon, at 12:40 p.m., the meeting in the
14 above-entitled matter adjourned.)

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REPORTER'S CERTIFICATE

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Public Meeting:

MINE SAFETY AND HEALTH

ADMINISTRATION

DATE: December 15, 1998

PLACE: Portland, Oregon

This is to certify that the attached proceedings
before the United States Department of Labor were held
according to the record and that this is the original,
complete, true and accurate transcript which has been
compared to the recording accomplished at the meeting.

____James H. Terrell_____

____December 17, 1998_____